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CONQUEST BY LAW

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CONQUEST BY LAW

Christie Jefferson

Solicitor General Canada	Solliciteur général Canada

FORWARD

The Aboriginal Corrections Unit of the Ministry of the Solicitor General is very pleased to have the opportunity to publish "Conquest by Law" by Ms. Christie Jefferson.

This document, which was originally written in 1978, is one of the most comprehensive reports to deal with traditional forms of justice among Aboriginal Peoples across Canada and the impact western settlement had on those systems.

It was decided to leave the report as it was originally drafted, ending its story in 1979, for two reasons. First, it was felt that the period between the end of this report and the present deserves, and has received, its own documentation given the rapid advancement Aboriginal Peoples have made in the area of justice and Aboriginal-Government relations. Second, the period in which this report was written, the late 1970's, was a period of history that had a distinct perspective and way of approaching issues. It was felt that by updating this report it would lose some of that flavour.

I hope you will enjoy reading "Conquest by Law" and you will wonder, as other readers have in the past, why it has taken so long for this report to see the light of day.

Ed Buller
Chief, Aboriginal Corrections
July 1994

Canada

To

Bill and Flora,
Bruce and Jennifer

for
their encouragement, support and patience

INTRODUCTION

This Manuscript is fifteen years old. Since then, land claims are being negotiated, aboriginal self government has become a legitimate demand, constitutional negotiations have come and gone, and aboriginal communities are creating their own answers to conflict, violence and pain in their communities.

The book ends in 1979. Ed Buller and I thought it best to view the entire manuscript as an historical document and leave it to another to bring the account up to date. I have left the manuscript much as it was written, with the words used then such as "Indian", "he" or "man" for people, and English names for various nations.

I offer the original manuscript in the spirit in which it was written: an account of the original aboriginal justice system and what happened when white men arrived with their laws and guns. It will hopefully serve as a useful reference and an account of a shameful part of Canadian history, the record of the pain and injustice that was suffered by the First Nations.

This book does not address the Inuit peoples. There is a unique story to be told that others were in a better position to tell. It is, however, a compilation of written materials by and interviews with aboriginal people, and written records of French and English explorers, traders, missionaries, military, police, Indian Affairs personnel, and anthropologists. The records of the latter are subject to the bias or prejudice of the authors and the political leanings of the day. I attempted to bring a sensitivity to these biases from my own anti-English background of Jacobite Scot and Irish.

A number of the elders who entrusted me with information about the history of their people are now dead. It is particularly gratifying that the Aboriginal Corrections Unit of the Secretariat of the Solicitor General of Canada published this manuscript so that their words would not be lost.

It is accurate to state that this book would not have been possible without the significant aid and support of a number of people. I would like to express my heartfelt appreciation to:

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The Setting

"If we had any disputes about hunting grounds, they were generally settled without the shedding of much blood: but an evil day came upon us; your forefathers crossed the great waters and landed on this island. Their numbers were small; they found friends, not enemies; they told us they had fled from their own country for fear of wicked men, and come here to enjoy their religion. They asked for a small seat; we took pity on them, granted their request, and they sat down among us; we gave them corn and meat; they gave us poison in return. The white people had now found our country, tidings were carried back, and more came among us; yet we did not fear them, we took them to be friends; they called us brothers; we believed them and gave them a larger seat. At length their number had greatly increased; they wanted more land; they wanted our country. Our eyes were opened, and our minds became uneasy. Wars took place; Indians were lured to fight against Indians, and many of our people were destroyed. They also brought strong liquors among us; it was strong and powerful, and has slain thousands."[1]

- from a speech by Red Jacket or
Sagayewatha, 1805

"And the Indians had said 'Keep your wine and your brandy in prison. It is your drinks which do all the ill, and not we Indians.'"[2]

"The Canadian government has created laws to maintain the system which oppresses us. The Judicial system serves to legitimize these laws, and makes it appear that it is our fault that we are oppressed."[3]

- joint position paper by the
Métis Society, Native Women, and
Northern Municipal Council of
Saskatchewan

"As native people, we are not greater criminals than whites. Most of the brothers and sisters are in jail for minor offences which stem from the frustrations of living in a racist and colonial society. These prison statistics clearly show the serious racism of the police and judicial systems of Canada."[4]

- Howard Adams

"One can see that the court system is not fair. That is, to we Indians. We note that a person from one of the larger Indian communities getting a fine of $150.00 for speeding with an old van that probably wouldn't be able to go more than 50 m.p.h., if that, when we see a non-Indian get a fine of $53.50 for the same offence as well as injuring several persons. We feel that there must be something behind the judge's mind that makes him want to give a stiff fine to an Indian. Is this another means of discrimination towards the Indians, and if it is, what can one do? I certainly don't know."[5]

- Micmac News editorial

"Criminal Justice is another Turkey with all the trimmings. Criminal Justice is Mandatory

Parole, which means parole after you have finished your sentence. Criminal Justice is Temporary Absence after over 3/4 of your sentence if you have lost all your pride and crumbed enough. Criminal Justice is not leniency nor any real concern for the Man's future. Criminal Justice is to see how far you can crawl."[6]

- the Native Brotherhood in
Saskatchewan Penitentiary

Justice, like beauty, is in the eye of the beholder.

Canadians are smug. We usually feel exempt from the ugliness of discrimination, apartheid, and injustice. We fail, as a group, to admit to inequalities in our society, in our social institutions, in our laws.

We rarely question the fundamental principles upon which our laws are based. We assume that there is equality before the law; we believe that legislation emerges through some king of mysterious, but democratic process, and reflects the sum total of our wishes, our values, our morality. The definition of "crime," and indeed, "justice," is left, on the whole, to a small group of people who are felt to represent the needs and interests of all in Canada. Seldom do we question the degree to which legislation is an expression of the interests and morals of Members of Parliament, particularly those of the ruling party. We rarely acknowledge the possibility that the administration of justice is an extension of the interests and values of the influential, as expressed and protected by the laws. Seldom do we view the nature and extent of "justice" as the result of a historical process.

For centuries we have possessed a stratified society, separating races and cultural groups. For most of this period the English have enjoyed economic and political control as a powerful minority. British common law and French civil law evolved within the more homogeneous societies of Europe, each nation's judicial system reflecting its common language, culture, and history. Canada possesses an imported constitutional framework, criminal code, judicial system, and legal principles. It should be conceivable that these foreign systems were not, and are not, applicable to the diverse societies of North America.

The opening quotes point a condemning finger at Canada and its law. The Native people of this country — the Indians, the Métis, and the Inuit — are filling our prisons. They cry that discrimination is not an ugly historical occurrence, but is ever-present, and at the roots of our society. The same system that declares them criminal sanctions the violation of earlier promises, treaties and laws. Laws that imprison them also confine them to poverty and political impotence.

Aboriginal people are imprisoned far more often than any other group in Canada. They are more likely to be arrested and charged, to plead guilty, and to be placed in federal maximum security institutions.[7] People of Indian ancestry are more frequently jailed for non-payment of fines, usually for violating regulations.

West of Ontario, the numbers and proportions of Native inmates are particularly formidable. Indians and Métis are at least four times more likely to be imprisoned than any other group in the plains, on the coast, or in the north. A report for the Law Reform Commission in 1974 revealed the following statistics:

> — In 1971-72, 50.9 per cent of admissions to provincial prisons in Manitoba were Native "offenders"; for the same year in Saskatchewan, 58.3 per cent of provincial jail admissions were persons of Indian ancestry. The report estimates that in both provinces the aboriginal population is about 12 per cent.[8]
>
> — In Alberta and British Columbia, the report estimated that five per cent of the general population is Native. In B.C. 23.4 per cent of admissions in 1971-72 to provincial prisons were Natives; in Alberta, 15 per cent.[9]

Recent changes in some provincial liquor laws have slowed the escalating numbers of imprisoned Natives. However, in provinces such as Alberta and Manitoba, Indians are still being jailed overnight, though now authorities no longer have to charge the individual. Evidence suggests that those imprisoned without charge are largely Aboriginal people.[10] These jailings are not reported in official statistics.

Although information for the east is sketchy, it appears that the situation is somewhat less gloomy. The rate of imprisonment for Indians and Métis is more in keeping with their proportion in the general populations. Federal penitentiaries, which confine persons sentenced to two years or more, house a smaller proportion of Native inmates than provincial prisons. This is understandable as the offences committed by Natives are usually of a less serious nature than those of non-Natives. Most Indian and Métis offenders violate provincial and municipal statutes and regulations, particularly liquor and highway statutes and regulations.[11] However, an unusual number of Natives -- especially status Indians -- are imprisoned in federal maximum security penitentiaries.[12] West of Ontario, Aboriginal people in federal penitentiaries continue to be over-representative of their numbers in the general population. Even the lowest estimates show that the proportion of Indian and Métis inmates in the western penitentiary population is twice their ratio in the provincial population.[13]

Most statistics are collected by questionnaires on admittance to prisons. This self-report method is unreliable, and, as a result, official statistics often underestimate the true numbers of Native inmates.

In 1974, government figures showed that 9.1 per cent of the penitentiary population in British Columbia was Native.[14] A survey by Native inmates the same year showed that 21 per cent were of Indian ancestry.[15] One explanation for the widely-different result is the fear that being identified as Indian will lead to prejudicial treatment in a hostile system.

What has caused the catastrophic level of imprisonment of aboriginal people in this country? What can be done to attack this complex dilemma?

In the past, justice officials attempting to understand the high incarceration rates of aboriginal people have viewed the situation as a still photograph, in isolation of causes and effects. If we are to understand the present relationship between Indian and Métis people and the Canadian justice system, we must comprehend its roots and evolution. Justice is a moral-laden concept, bound to a group's customs, religion, values, language, and history. Consequently, the investigation must be of sufficient scope to shed light on the connections between societies and their law.

In this analysis of Indians and justice, two concepts of "justice" will be reviewed to capture the essence of justice in two societies: Indian and White.

Before Europeans arrived on the shores of this continent, the Indian nations kept peace in their communities, in their own way. The European colonies established and maintained social control for themselves through a formal system that they imposed on the Aboriginal peoples they encountered. Inevitably, each concept was, and to some extent still is, used to define and evaluate the approach of the other system.

Europeans typically divide and formalize justice into compartments, such as criminal law, civil law, proclamations, treaties, and Indian legislation. Indian societies maintained a general stance towards unacceptable behaviour, integrating religious taboos, hunting regulations, ceremonial procedure, morals, violations against people and property, into one cohesive, unwritten code of behaviour. Thus, no complete history concerning Indians and justice in Canada can confine itself to the colonial and Canadian justice systems.

What methods did Indian people use to prevent and deal with unacceptable behaviour in their own communities before contact with white men? How was white justice brought into this vast northland? Upon what principles and values was it based? How has this law been administered in relation to Indian people? What were the reactions to the imposition of a European justice model? What role did the churches, the fur trade, the military, and the monarchies play in superimposing white justice? How did these new methods compare with traditional Indian law and enforcement? What is the predominant Indian and Métis view of white justice? What effect is the high rate of imprisonment having on aboriginal people and their communities? What approaches are emerging in the Native sector to combat justice-related problems? What future directions are possible and positive? Is it possible and desirable to have an Indian justice system in Canada? Can we adopt a new system that renders equitable justice for all Canadians?

Such complex questions require detailed analysis, and comprehensive answers. This book portrays traditional justice and its relation to Indian society for each major Indian nation, just before contact with Europeans. It will depict the introduction and evolution of white law and its application to the aboriginal population for each region and era. This book will record the adaptations to European justice in the affected tribes. The relationships between economic, political and religious interests of the European powers to their justice systems will be discussed. Conflict between Indians and white justice will be revealed in its nature and extent, and will precede an explanation of the escalating rate of imprisonment in the last two decades.

Armed with this information, the reasons behind the "Indian problem" in justice will be more readily discernible, and will point the way to alternate strategies for positive change.

The periods covered in this analysis are:

— pre-1500 up to the point of European contact and settlement in the east;

— 1500-1763, from the beginning of the dual French and English invasion and the period of duelling for control;

— 1763 to 1867, from the beginning of British control of her colony to Confederation;

— 1867 to 1960, the era of the Canadian Dominion, from Confederation to the granting of the right to vote in federal elections to Indians; and,

— 1960-1978, the evolution of Native programmes in response to the new "white problem" of excessive numbers of aboriginal inmates.

The remaining chapters will examine the present from an historical perspective, and provide a range of approaches to resolving the problems encountered between aboriginal people and the Canadian justice system.

The foundations of Canadian justice are ancient, and its relationship to the Canadian Indian dates back to the first contacts. The two groups, Indian and Caucasian, collided, as did their concepts and their embodiment of justice. It is essential to recognize and appreciate this historical conflict, if we are to understand the cries of humiliation, frustration, rage and despair heard in any Indian or Métis community, or on any Sunday morning in Regina's local jail.

Endnotes

1. K. Gooderham, I am an Indian (Toronto: J.M. Dent & Sons, 1969), p158.
2. A.G. Bayley, ed., The Conflict of European and Eastern Algonkian Cultures, 1507-1700 (Toronto: University of Toronto Press, 1969), p66.
3. Métis Society of Saskatchewan, Native Women of Saskatchewan, Northern Municipal Council, Position Paper (Ottawa: Canadian Intergovernmental Conference Secretariat, NCJ-25, 1975).
4. Howard Adams, "Canada is filling its prisons with Indians, says professor," in The Toronto Star (Toronto, October 21, 1972).
5. Union of Nova Scotia Indians, "Discrimination," in the Mic Mac News, editorial, (Sydney, N.S.: Union of N.S. Indians, April, 1972).
6. Native Brotherhood in Saskatchewan Penitentiary, "Why We Are In Prison," in C.A.S.N.P. Bulletin (Ottawa: Canadian Association in Support of the Native Peoples, 1975), Vol.16, No. 3, p3.
7. Métis and Non-Status Indian Crime and Justice Commission (Serpent River Reserve, Ontario: Woodland Studio, 1977), p80.
8. D.A. Schmeiser, The Native Offender and the Law (Ottawa: Information Canada, the Law Reform Commission, 1974), p1 & 6.
9. ibid, p10-11.
10. Larry Huculak, J. Dzradyk, Sentencing Under the Liquor Control Act (Alberta: unpublished), p26; and Schmeiser, The Native Offender, p40.
11. Schmeiser, The Native Offender, p81.
12. Métis and Non-Status Crime and Justice Commission, p17.
13. Statistics Division (Ottawa: Ministry of the Solicitor General, 1975).
14. ibid.
15. British Columbia Native Indian and Métis Education Club, "British Columbia Penitentiary, B.C. Native Brotherhood - Position Paper," in National Conference on Native Peoples and the Criminal Justice System - Briefing Book (Ottawa: Can. Intergovernmental Conference Secretariat, NCJ-12, 1975).

PART I
PEOPLE OF THE DAWN

Micmac Traditional Justice

The Mi'kmaq[1] or Micmac resided in what is now Nova Scotia, eastern New Brunswick, Prince Edward Island, and southern Gaspé. This time-honoured territory was subdivided into seven districts. Each contained family groupings clustered in small settlements as bases for hunting and fishing.[2] Prince Edward Island inhabitants held more territory in common than any other Micmac district; land more typically was allotted by family.[3]

Micmac government was three-tiered, with local, district and national chiefs or "sagamores." Each settlement's council of elders chose a local chief, who was the focus of power in the settlement. The local chief attained his position through both hereditary right and meritorious behaviour. The eldest son of a deceased chief was generally given first consideration as a successor. If found unfit for office despite special training, others in the family, and, if necessary others respected in the community, were considered.[4] The chiefs usually had two assistants or captains. Called second and third watchers, they would, if required, assume command from a sick or incompetent chief.[5]

The local chiefs would convene in a district council and select one of their number to preside over their meetings and represent the region's interests. These councils usually met in the spring or fall, and all decisions were based on unanimity.[6]

District sagamores made up the governing body of the Micmac nation, with one district chief acting as Grand Chief. All three types of chieftainships followed bloodlines as a natural course of leadership ascendency. The Micmac expected their chief to be a man of intelligence, knowledge, dignity, courage, generosity, as well as an able hunter and fearless warrior.[7] Leaders ruled through impeccable example, not force.

There was little confusion among the Micmac over what constituted proper behaviour, but enforcement and punishment appear to have varied. Some procedures, however, were held in common.

Murder was a heinous offence, and generally resulted in the death of the murderer. Once a murderer was identified, it appears that the elders' council and the chief usually passed sentence on behalf of the settlement, demanding a life for a life.[8] The condemned man was either executed by the victim's family or a larger group of friends and relations. If the assassin was a woman, the women of the village were at times called upon to act as executioners.

The Micmac distinguished between murder, manslaughter and accidental death. This tale shows the difference:

> "One night a man went to hunt moose, gave the moose call, and heard an answer. He was wearing, as a disguise, antlers of bark, in imitation of a moose. He

called again, and this time was sure that the answer came from a moose. The other, who was in fact a man, saw the antlers in the bushes and shot at it. He heard a fall, and went over to look at his kill. He peeled off a piece of bark, lighted it, held it up as a torch, and saw a fallen man, shot through the heart. He carried the body home, and explained how the misadventure had happened. He was not punished."[10]

As a person's territory was his and his family's sole livelihood, trespassing was a serious offence. If the trespasser persisted after being warned, the person with recognized rights to the territory could attempt to rectify the situation.[11] It is uncertain this action might have been. The offence may have been raised at the elders' council, which was responsible for allotting hunting and fishing territory.

The orphaned, the poor and the unfortunate were always relieved of suffering by others in Micmac society. The chief in particular was obliged to ensure the well-being of his people. If a traveller was hungry, he was welcome to enter a Micmac home if the owners were not there and take provisions without fear or shame. Thus, if a Micmac stole from another he was ridiculed and disdained for committing such an unnecessary act. The matter was generally taken no further.[12]

The community respected elderly Micmac citizens and their families took care of them. When their suffering became extreme, or an old person was fading in body and spirit, a quick and painless end was made of their lives, or they were abandoned in the forest to free their souls.

The Micmac were generally a peaceful nation, but conflict with other nations did exist, usually to avenge an injury. If a person from a hostile tribe committed an offence against a Micmac, it was "forbidden them by the laws and customs of the country to pardon or to forgive any one of their enemies, unless great presents are given on behalf of these to the whole nation, or to those who have been injured."[13]

If a prisoner of war committed an offence or attempted to escape, certain death awaited him.

The chiefs and friends of the parties concerned generally settled minor disputes and violations of the Micmac code of behaviour . Settlement often took the form of presents to the injured party. For more serious offences, the victim's family was responsible for obtaining a just conclusion, the others in the village showing little excitement over the matter; the villagers would dwell upon the word "habenquedouic" which meant "he did not begin it, he has paid him back: quits and (becomes) good friends."[14]

During the summer, social gatherings of many settlements were the opportunity for the formation of marriages. The host chief was aided by a "nudjialkatdegat ukcit maltewdj," or the "watcher of young people." Courtship was so strict that two young people frequently nodding and noticing each other were likely to be spied upon by the Watcher and their chief informed of the growing attachment.[15]

Polygamy was permitted in Micmac society, but marriage and relations between sexes were sacredly guarded. Once the couple and their families agreed on marriage the young man had to live with his fiancée's family for one year, providing it with all the fruits of his labour. The couple had to cohabit as brother and sister for the year and their relationship was carefully monitored. Violation of this tradition of chaste behaviour was believed to risk great evil for all the villagers.[16]

Pre-marital sex brought disgrace on the woman and her family, but she might still have found a spouse despite her indiscretion. Marriage between siblings, cousins, uncles and nieces was forbidden. Although either party was free to end a marriage, adultery was a serious crime. The adulterers were frequently put to death.[17] The stealing of another man's wife usually led to the abductor's execution by the woman's relatives.[18]

The shaman was also influential in settling conflicts in Micmac society. Besides his spiritual duties, the Micmac believed the shaman had the power to prevent or end misfortune resulting from an infraction of a traditional rule. The shaman was thought to be able to discover the identity of a guilty party so that the culprit could be made to pay for his offence. Offenders were known to approach the shaman and confess, hoping to thwart disaster for the community.[19]

An offender could repent and attempt to repay the victim for the harm and restore peace by offering an apology and presents .Acceptance of compensation likely rested with the offended party. A guilty party usually was resigned to the inevitability of just punishment. An offender might offer presents to his victim despite other punishment "to remove from the hearts of the (victim) all the bitterness caused by the crime of which (he is) guilty."[20] (italics are the author's.)

The Micmac in Nova Scotia used a type of penal colony at one time, but whether this existed before the European invasion is unclear. The phrase "devil's island" was used to describe these islands of banishment. Helen Martin, a Micmac of noble lineage, recalls that Chapel Island was used for this purpose. If a Micmac misbehaved, he was at times transported to the island for a few days to survive on his own. The offender was rescued by the settlement after he had time to learn the value of cooperation with his neighbours and the need for proper behaviour.

Every Micmac was encouraged to be seen as an ideal citizen in the eyes of his people. Respect flowed to the person who was generous, dignified, and kind to members of his nation and strangers alike. The Micmac "fear shame and reproach . . . they are stirred to do good by honour, for as much as he amongst them is always honoured and renowned who had done some fair exploit."[21]

Endnotes

1. Peter Christmas, Wejkwapniac (Nova Scotia: Micmac Association of Cultural Studies, 1977), p23.

2. ibid, p2.

3. Frank G. Speck, Beotuk and Micmac (New York: Museum of the American Indian, Heye Foundation, 1922), p117.

4. Bernard Hoffman, The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries (California: University of California, 1946), p515.

5. Wilson Wallis, and Ruth Wallis, The Micmac Indians of Eastern Canada (Minneapolis: University of Minnesota Press, 1954), p175.

6. Christmas, Wejkwapniac, p3 and 4.

7. Hoffman, The Historical, p515.

8. Wallis and Wallis, The Micmac, p173.

9. Marc Lescarbot, The History of New France (Toronto: Champlain Society, Third Edition) Volume I, p216.

10. Wallis and Wallis, The Micmac, p172-3.

11. Speck, Beotuk and Micmac, p94 & 131.

12. Thwaites, ed., The Jesuit Relations and Allied Documents, Travels and Explorations of the Jesuit Missionaries in New France 1610-1791, (Cleveland, Ohio, 1896) Volume I, p275.

13. Quote of Le Clerq in Hoffman, The Historical, p246.

14. Thwaites, Jesuit Relations, Volume I, p275.

15. Wallis and Wallis, The Micmac, p238.

16. Hoffman, The Historical, p285.

17. Thwaites, Jesuit Relations, Volume III, p99.

18. Wallis and Wallis, The Micmac, p173.

19. Hoffman, The Historical, p461.

20. ibid, p597.

21. Lescarbot, The History, p213.

Traditional Justice of the Naskapi

The Naskapi, or the Nanénot as they called themselves, lived in the elevated interior of Quebec, the Ungava Peninsula, and east of Sept Isles in Labrador.[1] A hunting tribe, it was loosely divided into bands of several families. Each band had its own recognized hunting grounds. A permanent tribal government structure did not exist. Only war was conducted under the direction of a general council.[2] This council usually consisted of the most notable warriors from each band rather than the peacetime chiefs.

In times of peace each band selected a head man or chief who had little authority and was careful to act according to public opinion. The support of a council of respected hunters in each settlement was essential for a chief to intervene in important matters.[3] The head man's duties included overseeing the distribution of hunting territories, the welfare of the members of his village, and certain judicial functions.[4] During the winter hunting season when the Naskapi were stationed in their scattered hunting grounds, the chief had no authority beyond any other man.

Elders instructed children at length to ensure their understanding of adult occupations, their environment, and the values and rules of Naskapi society. They were taught the necessity and methods of providing mutual assistance in their harsh climate, particularly during the winter months of isolation.

The harsh environment in which the Naskapi survived influenced the way they lived. This, in turn, affected the rules of daily life and their enforcement. A system, for example, evolved as a means to indicate that a person needed assistance and to assure those in need that help was on its way. Notched poles were set at the edge of a hunting territory, the pattern showing the type of emergency and the distance to the camp. Anyone noting these wooden pleas was required to lend assistance regardless of personal feelings towards those in trouble. Failure to help neighbours in need was believed to result in ill fortune in hunting through supernatural forces, and thus potential starvation. A traveller , whether Naskapi or stranger,suffering extreme hunger was free to take one-half of a food cache without the owner's prior permission or any immediate payment[5]

There appears to have been few forbidden activities and even fewer leading to the intervention of others between the parties concerned. Only in murder and continued disturbance of the peace would the council and chief interfere in a formal way, and even then only upon the request of the injured party.[6] The individual and his family were expected to handle most of their own problems, particularly during the hunting season.

The time of year and type of conflict would affect the selection of an outside party in the affairs of the individual in difficulty. If the dispute or offence occurred during the warm months when the band was gathered, or if the complainant could wait until summer, the chief was usually asked to intervene. When a complaint was brought forward, the accused was summoned before the chief and questioned. The person was expected to answer truthfully, and generally did. If he attempted to deny the charge when obviously guilty, he was punished to a greater degree than if he had responded truthfully. Complaints were rarely acted upon unless the accused was clearly guilty before the hearing. In minor cases, the chief would judge the case in private, taking no counsel. If the offence was considered serious and a threat to the peace of the community, the council and chief heard the case together.[7]

Murder and manslaughter were grave offences. There is no evident distinction between unintentional killing and murder in Naskapi philosophy. However, taking a life in self defence was not punished. Aiding another in committing a murder was a crime punishable to a lesser degree than murder itself. Giving shelter and food to a killer was not considered aiding in the offence, and was exempt from penalty. The victim's family was expected to avenge the death of their relative by taking the life of the murderer. Occasionally an offender was only wounded for taking a life, perhaps because of his status in the community or the circumstances surrounding the incident. The chief and council only became involved if the victim had no living relatives who could exact punishment, or if the family neglected its duty and had to be reminded.[8] On occasion, perhaps where the offender was not known or there was some doubt as to guilt, the chief would present gifts to console the grieving family.[9]

A person injured by another generally sought his own satisfaction. He may have exacted payment, or used a shaman to punish the offender in a fashion to be described shortly. The settlement would show an interest in this kind of situation only if the injured man was unable to hunt because of the assault; in this event the offender was required to provide food and shelter for the victim.

The chief was frequently asked to intervene in trespassing offences. In a hunting society all life and goods flow from this one source. It was consistent for the Naskapi had strict rules against trespassing, particularly for hunting. The major exception was trespass by a person in need, who had the right to hunt to stave off starvation.

On the first trespassing offence, the owner simply asked the interloper not to trespass again. A person who abused this privilege or who trespassed continually was a life-threatening problem for the family with rights to the territory. The rightful holder of hunting rights noted the repeated trespasses throughout the hunting season. On returning to the settlement the injured party asked the chief to deal with the offender.

> "The chief arranges to see the offender and advises him that he did the wrong thing and must never repeat his offence. Then, in order to give the wrongdoer an opportunity for repentance while not punishing him too severely the chief orders the offender to return to the owner of the land one-half the value of everything he took. The chief adds the warning, however, that if the trespasser repeats his offence the owner of the hunting-ground will be entitled to shoot him and explains that if during

the coming winter the crime is repeated and the rightful owner kills the illegal trapper or hunter the owner will not be brought to account."[10]

Theft was viewed with disdain by the Naskapi people; yet there was little punishment for theft. The thief was simply required to return the goods he stole. Arson and damage to another's hunting area was also cause for restitution. However, "theft" of another man's wife was a serious crime.

If a chief even suspected that such an action was about to be committed, he would intercede by forbidding the man from proceeding with his plan. If the man did not heed the chief's advice, he might be bound or tied to a tree to try to force him to agree to abandon his plan.[11]

Certain actions were not actively punished, but the parties quickly received a message of disapproval from their neighbours; sometimes this social ostracism became so great that the offender would emigrate. Incest, adultery and rape fell into this category. Husband or wife could initiate divorce, or desert the marriage. Desertion by the wife was considered less proper than desertion by the husband.[12]

The Naskapi believed in a sky God, and that spirits inhabited all things in their environment. Various ceremonies and taboos were associated with appeasing the spirits. If the ceremonies and taboos were neglected or inadequate, sickness or other tragedy would befall the offender.[13] Shaman were believed to be able to communicate with the spirits and ask them to protect or punish an individual.

Evil spirits were believed to exist and able to inhabit or replace the spirit of a human. Such a spirit was the "wiltigo," who could cause a person to become a cannibal. If a shaman was unsuccessful in ridding the person of this haunting spirit, then the sufferer was killed.

The shaman was asked in the winter to intervene in disputes that could not wait until the summer gathering to be solved. These disputes generally involved hunting violations.[14] The shaman was commissioned by one of the parties to act solely for him. By doing so, a person forfeited his right to solicit anyone else to settle the matter. The shaman usually determined the facts of the case and public sentiment before deciding to represent one side in a conflict.

Upon acceptance of a case, the shaman usually warned the accused that he was acting for the complainant; this caution was often sufficient to restore peace between the parties. If the offender persisted in his actions, the shaman asked his client to build a spirit house or "wapanon." The shaman entered this hut at night to begin a battle of spirits, the offender's spirit summoned by the shaman's spirit or "mistapéo." If the accused admitted his guilt, his spirit struggled against his adversary's and the shaman's spirits. The accused at times contracted with another shaman, and a battle of spirits took place between the shaman and their spiritual allies. If the shaman and his spiritual allies for the accused were defeated, it was believed that the accused would either drop dead on the spot, or experience such ill-fortune that starvation would end his days.[15] A trial appeared to occur in effect, the participants being of the spiritual world, but the consequences physical.

Persistent troublemakers were seen as threatening the community's peace. Accordingly, the whole community dealt with such behaviour.

> "...the incorrigible thief, the chronic quarreller, persons who habitually hunt on the land of others, are punished by the community with expulsion . . . Expulsion is equal to a death sentence. The culprit is expelled from the protecting shelter of the band; his hunting ground is no longer respected; his life is made miserable since he is shunned by his fellow human beings; he is like a lonely wolf."[16]

In summary, a Naskapi was expected to judge and control himself, and to have the power to deal with his own minor interpersonal problems. The individual had the liberty to live out his existence with the minimum of interference by persons with authority. The chief would only step into a dispute if asked or if there were very strong public opinion, and his authority was limited to the season when his band lived together. During the winter months, the shaman was often solicited to arrange spiritual or supernatural intervention for the victim. All knew the rules in Naskapi society, and these unwritten laws would only be upheld by powers outside the immediate family when absolutely necessary to guard the peace of the community.

Endnotes

1. Geographic Board of Canada, Handbook of Indians of Canada (Ottawa: C.H. Parmalee, 1912), p335.

   A.G. Bayley, ed., The Conflict of European and Eastern Algonkian Cultures, 1507-1700 (Toronto: University of Toronto Press, 1969), p3.

2. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 6th Edition, 1963), p272.

3. J.E. Lips, Naskapi Law (Lake St. John & Lake Mistassini Bands) (American Philosophical Society, Lancaster Press, 1947, Vol. 37, Part 4), p475.

4. ibid, p401 & 404.

5. ibid, p472-8.

6. ibid, p469.

7. ibid, p403 & 475.

8. ibid, p470.

9. Marc Lescarbot, The History of New France (Toronto: Champlain Society, 3rd Edition), p168.

10. J.E. Lips, Naskapi Law, p403.

11. ibid

12. ibid, p423.

13. Jenness, The Indians, p273.

14. Lips, Naskapi Law, p476-7.

15. ibid, p481.

16. ibid, p469.

PART II
STRUGGLE FOR POWER
1500 - 1763

The Invasion Begins

The European invasion of North America's east shore lasted 250 years before occupation was complete. The forces of European expansion in the New World were the explorers, traders, missionaries, soldiers and agents of the Monarchies. By the time they wrested control of the east coast from its indigenous owners, the tribes were decimated by disease, war, liquor, and outright genocide. The authority of the Indian chiefs and councils was usurped. Boundaries and affiliations between tribes dramatically altered with the presence of the white men. New definitions of morality and crime replaced traditional, just as the enforcers who upheld these foreign standards and laws undermined the old.

In their quest for riches, territory, and salvation, the intruders subjugated the Indian tribes of the east during a 250-year period, and strangled the lifeblood of future generations.

The first white men known to have visited upper North America were the Norsemen. Lief Ericson unsuccessfully tried to found a colony in Nova Scotia around 1000 A.D. The settlement quickly fell into ruin because of internal squabbling[1] and hostilities with local Indians. The contact between Indians and Europeans was so brief and modest that it slipped into mythology on both sides.

The discovery of incredible numbers of fish off Newfoundland's shores and John Cabot's arrival in Newfoundland in 1497 marked the beginning of the European onslaught. Portuguese, French, English and Spanish arrived in increasing numbers to partake in the bounty. However, a century passed between Cabot's first visit and the successful establishment of permanent settlements. Contact between white men and Indians during the 1500s was limited to forays ashore for supplies, minor trading, and explorations of the continent.

During this period there was little interference in the lives of the tribes, though white men's acts of marked brutality indicated what was to follow. The explorer Cartier provides an early example of European intentions. Cartier kidnapped Indians, including chiefs and children, who welcomed him, to learn more about the inhabitants of the new continent and to display them in Europe.[2] During Cartier's first exploration of North America in 1533, dozens of boats were launched by the Micmac amid gestures of greeting. Cartier greeted the Micmac with a volley of gunfire. No sooner had peace been negotiated and solemnized by an exchange of presents, than a cross, bearing the inscription "Long Live the King of France," was planted on the shores of Micmac territory. The Chief of the district calmly reprimanded his new "friends," noting that all the land around was his, and that Cartier had "no right to set up this cross without his leave."[3] The Chief could not have known the implications of this cross to the men from across the water. Cartier was claiming territory for a European nation, and beginning the evolution towards war for the territory of all the eastern Indian nations.

In the early 1600s drying replaced salting as the predominant method for preserving fish for the long voyage home. The improved technique made permanent coastal settlements necessary. At the same time growing European demand for American peltries (furs) inspired white intrusion further inland. These new economic interests fanned English and French competition and hostilities. The goods and liquor traded for furs laid the groundwork for economic dependence for the increasing number of Indians involved in the exchange. Economic dependence was a forerunner to the loss of the tribes' political and social control.

The expansion of the exorbitantly profitable fur trade depended upon exclusive colonial rights and efforts as territorial claims and settlement began in earnest. In 1540, the King of France sent representatives to establish colonies: Jacques Cartier, the Captain General of the enterprise, and Msgr. Jean François, the first Lieutenant-Governor of New France. In later voyages, the Captain General and other high-ranking officials had the right to administer justice for settlers in the new colonies[4] This was the beginning of colonial government in Canada.

This first attempt to colonize New France was unsuccessful, but not without effect. Trying to salvage the plan, the French King issued monopolies to several individuals between 1602 and 1627, when the Compagnie de la Nouvelle France was formed by Cardinal Richelieu. There were skirmishes between the French and English in the early days of fur-trade competition; the formation of Cardinal Richelieu's company and the French efforts to establish a stable colony marked the start of the major struggle for control of the "new world."

Settlement remained small and stagnant until Louis XIV and his minister, Colbert, began serious imperialistic efforts in 1661. Supplies, soldiers and settlers poured into the region, [5] and the extensive seizure of Indian territory started. No one seemed to consider the ownership rights of the aboriginal people who thinly populated the region. Indian nations were important to Europeans only for military, commercial and religious reasons. The English, who were establishing their headquarters in New England, contested Acadia, or Nova Scotia, by importing their Indian allies, particularly the Mohawk, to battle the French and their Algonkian allies.[6]

The Europeans and their imported conflict significantly altered tribal boundaries and contributed to the formation of new confederacies among some tribes. In ancient times, the Mohawk inhabited the east to the extent that they came into regular contact with the Micmac. Mohawk and Micmac may once have been on friendly terms. A quarrel broke out, and the Kwedeches or Mohawks, were driven into what is now Québec and beyond.[7] The Mohawks became partners in the Iroquois confederacy founded in the 1400s, and the rivalry with the Micmac and the other eastern tribes grew to include all Iroquois. With the arrival of Europeans and the alliance of the eastern tribes with the French, the

The spread of English settlement in New England pushed the Abnaki, a nation residing in the region presently known as Maine, north in the 1670s. The Abnaki, particularly the Penobscot, Malecite, and Passamoquoddy branches, joined forces with the other Indian Maritime nations aligned with the French.[9] Several eastern tribes, most notably the Micmac, joined with the migrant Abnaki to form the Wabnaki confederacy that lasted well into the 1800s. Besides its defence functions, the confederacy established regulations for the tribes of the union, particularly for hunting and fishing territories. Each nation maintained its own laws and political structure.

The Iroquois in a surprise gesture delivered a wampum belt to the Wabnaki confederacy and other eastern tribes sometime after 1638, thus initiating the formation of a broader, but looser, confederacy. (This confederacy will be described in detail at a later point.) The confederacy met in Caughnawaga, Québec, usually every three years.

The escalating violence that came with the newcomers spurred a widely-known Huron chief, Kondiaronk, to strengthen the Indian coalition.

> "In 1701, Kondiaronk presided over a peace conference that was attended by chiefs of thirty-eight nations. 1300 representatives are said to have concluded a peace agreement and pact of neutrality, which became known as the Peace of Montréal."[10]

The introduction of Christianity was a major influence in the creation of a confederacy of French-Indian allies. The Jesuits, emissaries of the Roman Catholic Church, provided a common link of religious affiliation that led to political alliance with the French monarchy. The missionaries played a significant role in spreading the tentacles of the French fur trade. The French crown had bestowed half ownership in the fur trade to the Jesuits. When the first missionaries landed at Port Royal in Acadia (Nova Scotia) in 1611, the interests of the Church were married to the interests of the French empire.[11] The missionaries provided the French with a type and degree of influence that early settlement could not; Jesuits were often the only French inhabitants among allied tribes during the 1600s and early 1700s.

The influence of the Roman Catholic Church in the east was consolidated among the Micmac when their Grand Chiefs converted. Grand Chief Membertou, who was converted in 1610 when well over a century in age, changed the role of the senior Micmac chief. The Church had a Micmac representative in Grand Chiefs from this date forward.[12]

The Jesuit missionaries had substantial influence over the inhabitants of Nova Scotia or Acadia, during this time. The tribes of the east were rarely taught to read or write French, but were instructed in their own languages; as a result, for many decades the priests remained the sole source of information and interpretation of European activities and intent. The policy that only Indians who were baptized Catholic were allowed French guns and ammunition to protect their territory from the land-hungry British to the south provided additional incentive for Indian alliance with the Church.[13]

Some Jesuits, such as Father Le Loutre, used their influence to encourage counterattacks against the British and were at times participants in the war against the "common enemy." The Jesuits also acted as informal civil magistrates, using "ecclesiastical penalties to enforce their decisions, which were often influenced by French political concerns in Québec and France."[14] English endeavours to undermine this judicial role met with little success.

The Church's concern about divorce illustrates the involvement of missionaries. The tribes of the east generally held that absolute fidelity was required in marriage. But husbands and wives were free to leave or, in European terms, divorce their partner at will. The missionaries were appalled at the divorce rate among their Indian "charges," and determined to eradicate what was a mortal sin under Church edict. Generally, the woman was approached when it was learned that a couple had separated; threats of punishment were often used to encourage the wife to return to her husband.

> "Sometimes the women submitted, and others preferred the degradation of imprisonment to the companionship of their former mates. On one occasion a woman was kept twenty-four hours without fire or blanket, and with scarcely any food. On another a woman who fled from her husband was threatened with being chained by the foot for four days and nights without food."[15]

Despite the Church's role in the definition and enforcement of certain crimes, the Micmac held on to many of their customs. On occasion they showed resentment over the interference of missionaries and other Europeans in their way of life. For example, Father Le Clercq reported in his writings an incident concerning an elderly and hungry widow who refused to eat from the abundant meat supply of a young hunter; ancient custom forbid the widow to consume the meat under the circumstances, and she resisted all the missionaries' attempts to convince her to the contrary.

> "Her children murmured against me because I solicited their mother to abandon the customs of their ancestors saying to me that the Indians had their manner of living, as well as the French, and that we should follow our maxims without wishing to oblige them to abandon theirs."[16]

The epidemics that ravaged the eastern Indians throughout this era undermined the authority of the shaman, the traditional spiritual leaders. While shaman, chief and Indian citizen alike were dying by the hundreds from disease, the Jesuits remained in what appeared to be remarkable or unnatural health. The east coast tribes had long believed that shaman could cause death through supernatural powers. It was natural that when Catholic missionaries preached about revenge by God for evil behaviour, some Indians credited the epidemics to the missionaries as punishment for improper actions.[17]

Spiritual leaders were not the only Indian people whose authority was undermined through contact with Europeans. Father Baird reported in 1616 that only two or three Micmac chiefs continued to have full influence in their districts. The chiefs' powers in the east were founded upon the voluntary support of the people. As foreign authority figures such as the priest and fur trader were introduced to Indian society, the Maritime Indian tribes no longer upheld all their chiefs' wishes and advice.[18]

While the chiefs' authority waned, the elders' councils fared even worse.[19] The councils had traditionally performed the major role in determining hunting areas and regulations. The councils first lost much of that function to the traders, and later to fur company managers as the fur trade became established. The Montagnais, for example, changed from holding their hunting territories in families or groups to individual ownership.[20]

The Micmac were subjected to the bulk of white settlement in the Maritimes during this era, and to the ravages of the European struggle for Nova Scotia. The colony changed hands between the French and English six times from 1621, when Sir William Alexander was granted the territory by the British Crown, until the Treaty of Utrecht in 1714.[21] As French allies, the Micmac suffered grave consequences during the periods of British supremacy. The English offered bounties for each Indian killed or taken prisoner. The going rate was ten pounds for the scalp of any Indian man, woman or child.[22] War, however, was never formally declared against the Micmac.

Liquor contributed significantly to the devastation of Indian settlements. Peaceful communities were shattered by beatings and even murders. Descriptions of this era are laced with tales of the consequences of liquor in the expansion of the fur trade.

> "But at present, since they have frequented the fishing vessels, they drink in quite another fashion . . . They do not call it drinking unless they become drunk, and do not think they have been drinking unless they fight and are hurt . . . Immediately after taking everything with which they can injure themselves, the women carry it into the woods, afar off, where they go to hide with their children. After that they have a fine time, beating, injuring, and killing one another."[23]

The Maritime tribes appear to have interpreted the novel effect of alcohol in light of past experience; bizarre behaviour had always been viewed as the handiwork of an evil, supernatural agent. "When an Indian drank brandy he was temporarily inhabited by this agent who was responsible for his acts."[24] For as long as two centuries, this general opinion made punishment or even condemnation by Indian authorities of any action committed while a tribal member was intoxicated next to impossible.

The debate between the French State and Church over ways to curb the destructive effects of liquor led to early encroachment of the Indians' right to handle their own problems. State and Church invoked various proclamations and laws concerning liquor during the 1600s and 1700s, paving the way for special "Indian crime." In 1636, the following regulation was brought into effect in New France:

> "Intoxicated Indians were to declare who had sold them liquor and the culprits were to be fined. If they refused to tell they were to be forbidden entry to French houses. If they were admitted, both French and Indians were to be punished. For an infringement of these restrictions a Frenchman was fined fifty francs, but the guilty Indians promised to remunerate him in peltries (furs)."[25]

Attitudes hardened in legislation later in the 17th century. His Majesty's council authorized an attorney in 1657 to "arrest drunken Indians and compel them to name the French vendors."[26] In 1660, the Church issued a proclamation establishing the punishment of excommunication for selling liquor to Indians.

The eastern chiefs grew deeply anxious about the effects of alcohol, some joining with the Governor in 1648:

> "to prohibit the sale, purchase and excessive consumption of spirituous liquors. It was said that the chief who spoke the law to his people knew that the Indians would not recognize French jurisdiction, so he assured them that all the chiefs spoke the law, and that they would be given over to the penalties of the French if they transgressed it. At both Cadosassac and Three Rivers severe penalties for drunkenness were exacted throughout the period."[27]

There were complaints to the French Governor from Indians about this special legislation against them, as a drunken Frenchman could carouse unmolested by the authorities. "On the other hand, the Indians were sometimes only too ready to punish themselves, and on more than one occasion they asked permission to beat themselves with whips."[28]

The presence of white men in the Maritimes had other, equally serious, effects on traditional justice among the Indian nations. Some tribes combined European approaches with their own system. Others were forced to abandon responsibility for justice in certain circumstances. Still others succumbed to the European onslaught, losing political and legal control almost completely.

The formal declaration of European jurisdiction over judicial matters for the tribes did not come until there were enough whites for successful administration and enforcement. For example, two Frenchmen were murdered in Québec in 1618 by two Montagnais, as both groups agreed. The French wanted to try the accused under French law and great debate followed. Eventually it was decided to accept the children offered by the tribe as reparation for the deed, the French being vastly outnumbered by their Indian allies.[29]

This type of accommodation was short-lived. In April, 1644, the French colonial government summoned the chiefs of its allies to Québec to tell them that "crimes of violence and murder should be subject to the penalties of French law."[30]

The British did the same in treaties with the Micmac signed during each occupation of Nova Scotia. In these "agreements," the question of jurisdiction was a recurring issue. In 1693, the following article was included in the Submission and Agreement of the Eastern Indians at Fort William Henry:

> "If any controversy or difference at any time hereafter happen to arise between any of the English and Indians, for any real or supposed wrong or injury done on one side or the other, no private revenge shall be taken by the Indians for the same, but proper application be made to their Majesties' government upon the place, for remedy thereof, in a due course of justice; we hereby are submitting ourselves to be ruled and governed by their Majesties' laws and desires to have the benefit of the same."[31]

The Treaties of 1713 and 1725 repeated the clause.

The settlement of the Algonquin in large villages affected their core values and social stability. In the previous centuries, the Algonquin families were scattered; all persons were known in the small groupings, and each understood what constituted proper behaviour. The Europeans overran the traditional Algonquin power structure, and customary forms of behaviour were no longer appropriate in light of the newcomers' reality.[32]

The Naskapi and Montagnais nations were more resistant to changes. The Naskapi, particularly, were isolated in the north east, and contact with white people was limited to missionaries and traders for some time. Their semi-nomadic hunting existence was largely unaltered, though some aspects of European justice were incorporated in the Naskapi enforcement and legal procedures. The hearings of the chief and council acquired a more formal court atmosphere. Witnesses were summoned, unlike in old times, but no oaths were required. It was firmly understood that all witnesses, including the accused, would tell the truth. To decide guilt the chief and council voted, the majority deciding. The chief pronounced sentence, and it appears that the council usually carried it out. If the offender was sentenced to execution, three or four councillors immediately led the condemned man away from the village to perform the act with guns.[33] This state execution was in direct contrast to the traditional custom of leaving the punishment to the offended family.

This era of combat ended with the defeat of the French, the capitulation of Montréal in 1760, and the expulsion of the Acadians from Nova Scotia three years later.

The invasion of Europeans had provoked hatred, violence, death, and conquest of the Indian inhabitants of the east. The tribes had been allowed to handle their internal affairs while they were needed as armies to fight European battles. Creative alliances had formed, and with them new regional and local approaches to Indian laws were produced among Indians. The Peace of Paris in 1763 completely altered the relationship between white and Indian. Accommodations to Indian ways were no longer necessary, nor allowed.

The traditional structures of the eastern tribes were overthrown, and white law overruled Indian justice. The era of subjugation was unmasked.

Endnotes

1. J.M.S. Careless, Canada, A Story of Challenge (Toronto: Macmillan of Canada, 1963), p23.

2. Bernard Hoffman, The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries (Los Angeles: University of California, 1946), p28.

3. Marc Lescarbot, The History of New France (Toronto: Champlain Society, 3rd Edition), p52.

4. ibid, p181.

5. Careless, Canada, p47-8.

6. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ontario: Collier-Macmillan Canada, 1976), p63.

7. Hoffman, The Historical, p97.

8. ibid, p111.

9. W.D. Wallis, and R.S. Wallis, The Micmac Indians of Eastern Canada (Minneapolis: University of Minnesota Press, 1954), p223.

10. Kanatha (Huron Village, Québec: Centre Socio-Culturel Amerindien, Volume 4, No. 1), p6-7.

11. Hoffman, The Historical, p43.

12. anonymous, The Prehistory of the Maine-Maritime Area (available through the Union of Nova Scotia Indians, Sydney).

13. Patterson, The Canadian Indian, p61.

14. anonymous, The Prehistory.

15. A.G. Bailey, ed., The Conflict of European and Eastern Algonkian Cultures, 1507-1700 (Toronto: University of Toronto Press, 1969), p104.

16. Hoffman, The Historical, p311-12.

17. R.G. Thwaites, ed., The Jesuit Relations and Allied Documents, Travels, and Explorations of the Jesuit Missionaries in New France 1610-1791 (Cleveland, Ohio, 1896, Volume XVI), p53-93.

18. Hoffman, The Historical, p511.

19. J.E. Lips, Naskapi Law (Lake St. John and Lake Mistassini Bands (American Philosophical Society, Lancaster Press, 1947, Vol. 37, Part 4), p187.

20. Patterson, The Canadian Indian, p66.

21. Indian-Eskimo Association of Canada Legal Committee, Native Rights in Canada (Toronto, 1970), p35.

22. R.O. MacFarlene, "Canadian Historical Review" in The Native Peoples of Atlantic Canada (Toronto: McClelland & Stewart, 1974), p56-7.

23. Nicholas Denys, "The Description and Natural History of the Coasts of North America" in The Native People of Atlantic Canada, p39.

24. Bailey, The Conflict of, p73.

25. Thwaites, Jesuit Relations, Volume IX, p203-5.

26. Bailey, The Conflict of, p67.

27. Thwaites, Jesuit Relations, Volume XXXIII, P49.

28. Thwaites, Jesuit Relations, Volume XXIX, p77-79.

29. Bailey, The Conflict of, p94.

30. anonymous, The Prehistory.

31. Union of Nova Scotia Indians, Micmac News (Sydney, Nova Scotia, Volume 2, No. 2).

32. Bailey, The Conflict of, P96.

33. Lips, Naskapi Law, p475-6.

Indian Civilization in the Central Regions

In the bounteous terrain of the central woodlands with its fertile soils and lakes the size of seas, there were many imposing Indian nations. The great trading confederacy of the Huron, the famous Iroquois league of agricultural nations, the mighty Ojibway hunters, the strategic Cree nation in the north, and the productive Tobacco and Neutral tribes lived side-by side. The societies of these tribes were unique. All these nations cannot be described for lack of sufficient information. The Tobacco and Neutral tribes, long since disbanded, are excluded from this analysis. Most accounts recorded Cree civilization after the migration to the plains. The description of Cree society is reserved for the plains section. Traditional societies and modes of justice of the Iroquois, Huron, and Ojibway are described in the following pages.

Ojibway or Chippewa Traditional Justice

The four tribes of the immense Ojibway nation inhabited the forests around the western Great Lakes, and the eastern fringe of the plains. The Ottawa, Ojibway of Lake Superior, the Missisaugu, and the Potawatomi tribes of the Ojibway were further sub-divided into clans or "tudem;" marriage within the clans was forbidden, even when the suitor hailed from a different tribe.[1]

The ascendency of chiefs, and social organization of the various clan groupings or bands, varied according to locale in the far-flung Ojibway domain. All villages possessed head chiefs and councils of proven hunters and warriors who together were the centre of political power in the Ojibway tribes. There was rarely a chief who held sway over all clans in one tribe, and a grand chief of the entire nation was unheard of in ancient days. Most chiefs and the principal men from the settlements attended inter-tribal council meetings to discuss common concerns such as division of territory, treaties, and disputes.[2]

The Ottawa, Ojibway proper, and the Potawatomi eventually established a closer bond, their chiefs convening at what became known as the Council of Three Fires.

The bands on the border of the Prairies (southern Manitoba) were hunters of the wandering buffalo herds. Chiefs were elected from a general council of proven warriors. Their powers were eclipsed by warrior societies called "strong-hearted" men. These societies maintained order and acted as police during the immense and crucial buffalo hunts.[3] The society, laws, and enforcement of the plains Ojibway were notably similar to the other plains societies to be described in a later section.

In the villages of the woodland Ojibway, north of the western Great Lakes, the chief and council were responsible for managing all the affairs of the community. The chieftainship was hereditary, but not automatic, the heir being carefully evaluated. These chiefs reigned in times of peace, stepping back to allow elected war chiefs to assume their duties during hostilities. The authority of a particular chief depended not so much on his position, but on his personal attributes. The chief and councillors were required to act impeccably in all circumstances, and through their example encourage proper behaviour among the villagers. Personal disgrace, and its reflection on the shamed person's family, were effective tools in the hands of the chiefs and councils in controlling unruly and offensive behaviour.[4]

The chief was expected to intervene in disputes between band members, and be actively involved in negotiations with other band and tribe chiefs. Strife within a family, however, was left to the head man to handle; this responsibility on occasion led to the heartrending task of having to take the life of a close relative. An Ojibway woman on Parry Island was known to have murdered her baby and escaped to her brother's abode. The husband followed her trail, and finding her seated beside her brother, declared the woman to be the murderer of their infant. The brother immediately turned and struck down his sister, executing her on behalf of his family.[5]

Murder between families, bands, or tribes usually led to outside interference. In some communities, particularly those in the far west of Ojibway territory, the chief might offer the murderer protection if the incident seemed to warrant leniency. If the chief remained silent, the murderer was usually executed by the victim's relatives.[6]

In the more easterly villages, the chief and council formally deliberated on serious theft and in murder. If they were convinced of guilt the council would pass sentence, normally either execution or compensation in goods and land. If the murder involved another village, representatives of each village met to discuss settlement and avoid more bloodshed. If execution was demanded, a close relative of the victim performed the execution. The victim's family sometimes preferred to request enormous quantities of goods and territory; to amass such an amount, several years of hard labour was necessary, the brunt of the work born by the murderer.[7] At times, murder between villages provoked war, spreading misery and destruction throughout the area. Such incidents encouraged the Ojibway to listen to the advice of the chiefs and wise men to settle the conflict peaceably.

It was at times necessary for a chief to judge a close relative accused of a serious crime. An illustration of such a heartbreaking decision is found in the murder of a Potawatomi man, slain by his enraged wife for having sold her pony for more whisky. (This event obviously occurred after contact, but illustrates the traditional system of this tribe). The killer was the chief's daughter. Despite this, the chief had to pass judgment:

> "His integrity as an Indian chief prevailed . . . The storm of agony in the mind of the chief had passed away, and in deep sorrow, he decided that his daughter ought to die by the hand of the nearest kin to the murdered Indian, according to their custom for ages past."[8]

Witchcraft was dreaded among the Ojibway, as it was in most nations of the world during this era. Witches were seen as "persons supposed to possess the agency of familiar spirits, from whom they receive power to inflict diseases on their enemies, prevent the good luck of the hunter, and the success of the warrior."[9]

If found practising sorcery, a witch could be slain immediately; a suspected witch was frequently brought before the chief and council for an investigation. If the accused were found to be a witch, execution was carried out by the victim's family. Often a deformed or evil-countenanced person was suspected of having witch's powers. Many hesitated to accuse one they suspected of sorcery for fear of revenge. These same misgivings occasionally prompted persons believed to be under the influence of sorcery to seek out the shaman, rather than the chief and council.[10] A shaman was expected to use special powers to counteract the witchcraft and to reap revenge against the offender.

Ojibway society, as most other Indian societies, was communal and provided any individual in need with all that was required. Theft of another's goods was, therefore, unnecessary and regarded as shameful. The thief was condemned publicly by being clothed in a costume showing his offence.[11]

If a man was unfaithful to his spouse, or had a relationship with a married woman, he was also shamed in public, or perhaps even killed by the maddened husband. A woman guilty of adultery was disgraced by having her hair shorn, or she was simply abandoned.[12] Other minor violations of the Ojibway code of behaviour were publicly condemned by the offender's chief.

As soon as children could reason, they were instructed in the customs and rules of their nation; the consequences of violation were noted, not just for the offender, but the other villagers as well. For example, children were to keep quiet in the evenings, or their parents would catch no game. Torturing an animal was strictly forbidden, as "you will torture your own soul and surely meet with misfortune,"[13] the elders warned. The children were taught to wait half an hour before skinning an animal, "lest its shadow learn to know you and prevent you from killing other animals of the same species."[14]

The Ojibway believed that all their citizens could affect others through their actions. "Medés," who were members of the Grand Medicine Society or "Midewiwin," were believed to have extraordinary powers of influence. Men and women of the Society were tutored at length in medical and religious knowledge accrued by their ancestors. Members followed a strict code of behaviour. They were forbidden to lie or steal; required to be faithful to their spouses; respectful to their parents and elders; and, devoted to the Great Spirit.[15] Medés were capable of benefiting their communities, but occasionally abused their gift in unholy pursuits.[16] It was held that Medés who used their power for evil purposes would be punished after death by having their souls barred from the kingdom of the Great Spirit.

The Ojibway tribes maintained peaceful co-existence among their members through exemplary behaviour of their leaders, established tradition taught by the elders, religious or supernatural powers, and public disgrace of a violator. "This fear of the nation's censure acted as a mighty bond, binding all in one social, honourable compact. They would not as brutes be whipped into duty. They would as men be persuaded to the right."[17]

Endnotes

1. Diamond Jenness, The Ojibway Indians of Parry Island, Their Social and Religious Life (Ottawa: Printer to the King's Most Excellent Majesty, 1935), p7.

2. Peter Jones or Kahkewaquonaby, History of the Ojibway Indians (New York: Books for Libraries Press, 1861), p107.

3. Thomas Mails, Dog Soldiers, Bear Men and Buffalo Women (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p355.

4. Jones, History of the Ojibway, p57, & 108-9.

5. Jenness, The Ojibway Indians, p3.

6. G. Copway or Kah-Ge-Ga-Gah-Bowk, The Traditional History and Characteristic Sketches of the Ojibway Nation (London: Charles Gilpin, 1850. Reprinted by Coles Publishing Co., Toronto, 1972), p143.

7. Jones, History of the Ojibway, p109.

8. ibid, p257.

9. ibid, p145.

10. Jenness, The Ojibway Indians, p3.

11. Copway, The Traditional History, p144.

12. Jenness, The Ojibway Indians, p100.

13. ibid, p80.

14. ibid.

15. William Warren, History of the Ojibway Nation (Minnesota: Ross & Haines, 1957), p101.

16. Jenness, The Ojibway Indians, p77.

17. Copway, The Traditional History, p144.

Justice of the Iroquois Confederacy

The agricultural people of the Iroquois Confederacy dwelt in permanent villages in the lush domain now called Southern Ontario, Southern Québec, and Northeastern United States. The Indian nations inhabiting this vast area formed a formal and lasting confederacy by 1450. The members called themselves "Ho-Dé-No-Sau-Nee" and their league "Kanonsionni," meaning Extended House.[1]

The confederacy became known to the Europeans as the Iroquois, or Five Nations. The Iroquois league was created to bring about permanent peace and harmony between neighbours, and was capable of unlimited expansion. The White Tree of Peace was the symbol of the coalition.

The five nations who first joined hands were the Mohawk, Oneida, Onondaga, Cayuga, and Seneca. The Tuscaroras migrated from Carolina and united with the league in 1722. The Iroquois were bound in a treaty of friendship with the Ojibway to the north, a bond that continued for 200 years.

The confederacy was formalized by a constitution, recorded on wampum belts to preserve the understanding for all generations to follow. Each nation retained its own council and managed its own local affairs. However, "general control was to be lodged in a federal senate, composed of representatives elected by each nation, holding office during good behaviour, and acknowledged as ruling chiefs throughout the whole confederacy."[2]

Every nation was further subdivided into clans. Each clan discussed a matter to be brought before the federal council, followed by unanimous agreement between clans. The head chief would then announce the vote of his nation in the league council.

Fifty "sachemships" were created, these men representing their nation's interests on the general council, while continuing to exercise leadership at the local level. These sachems together formed the "executive, legislative, and judicial authority" of the league.[3]

Although each nation possessed unique responsibility in the confederacy, no sachem had greater rights than another. The Onondaga Nation were the keepers of the council fire and the wampum records of the constitution, laws, and treaties. The Onondagas had 14 representatives; the Cayuga, 10; the Mohawk and Oneida, nine each; and the Seneca, eight. All council decisions were unanimous. The Onondaga as the firekeepers (chairmen) and the Mohawks as the founders of the league had the special duty and right of preventing a decision from passing if it was harmful to the people. The two head Seneca chiefs were stationed at the door of the council room, to prevent any "crawling creature" or injurious motion from proceeding.[4]

The sachems were selected, and deposed if necessary, by the head woman of the family with the hereditary right to provide a principal chief. She chose the most suitable man for the office, with little regard for age. If the proposed chief was accepted by the council but was so young that he lacked experience and knowledge, the council selected a tutor to guide and teach him.[5]

Iroquois women held other powers in their communities. All the member nations were matriarchal: all goods, titles and rights followed the female line of descent. The elder women were the heads of the family. The women had orators representing them at council meetings, or they spoke directly through a chief. In times of war, women were peacemakers by right and duty: "when in their opinion the strike had lasted long enough to interfere and bring about a reconciliation."[6]

A distinction existed between leaders in times of peace and during wars. A sachem could not participate in a battle in his official capacity.[7] The constitution specified that each sachem have a war chief and a runner to bring tidings; in war, the sachem was to step down and be replaced by the war chief until hostilities ended. The war chief acted as an adviser to his sachem in peace, his words carrying considerable weight.

Lesser chiefs, or captains as they were occasionally called, existed in Iroquois villages. These chiefs were intermediaries between the sachems and their people, and gradually grew in influence. Men were awarded these positions according to merit, family rank being of no consequence.[9] A warrior who assisted the chiefs capably, and who was trustworthy and honest, was appointed chief by the others. The lesser chieftanships were not hereditary.

The chiefs governed by requests to their people, rather than with orders; it appears that they possessed no powers of force other than public sentiment and tradition. Consequently, leaders were careful to ask nothing that might likely meet with refusal. Their decisions were on the whole willingly carried out, creating an orderly, but liberal society.[10]

The Iroquois, then, developed a unique system of government that combined hereditary and elective elements. Principal chiefs were chosen by the women, who were not eligible themselves to be chiefs. As a result, they were likely to select leaders with no other consideration but the good of the nation.

The moral fibre of the community was guarded by "Keepers of the Faith," widely respected men and women selected from the populace. On election as a keeper of the faith, a citizen was duty-bound to accept and adopt a new name. The office could be relinquished.

> "They were to some extent censors of the people; and their admonitions were received with kindness, as coming from those commissioned to remonstrate. In some cases they reported evil deeds of individuals to the council, to make of them an

example by exposure. Sometimes they held consultations to deliberate upon the moral condition of the people."[11]

The extended family was the basic social and economic unit in all the Iroquois nations. The lives and property of the members were in effect owned by the clan. The clan had the right to take the life of one of its members, and was the unit to which compensation for an offence was made.[12] The woman, as head of the household, exercised considerable influence on both the day-to-day life in the villages and on affairs of state.

For a confederation founded on the notion of peace, murder presented a potentially dangerous situation for the league; the possibility of vendettas was a real threat. The Iroquois encouraged settlement in cases of murder. The clan councils actively encouraged the guilty to confess and deliver a present of white wampum as a humble petition for forgiveness. The head woman of the clan and her council decided the fate of the murderer. If the murderer sent his offering before someone was appointed to avenge the murder, a settlement might be reached. If, however, the offender was tardy in his request for forgiveness, and the victim's clan had already decided upon his death, his fate was sealed. His only hope of escape was to flee.[13]

Occasionally, the head woman of the victim's family adopted the murderer to replace the victim in the clan. As a test she may have required the offender to "run the gauntlet" of stick-wielding relatives; if the murderer survived this ordeal, he was accepted into the family.[14]

If the victim's family accepted the six white wampum belts, the customary number given for a life, the matter was closed.[15]

One of the most serious crimes in Iroquois society was witchcraft, seen as threatening to the whole group. If a person was suspected of being a witch he was summoned before the village or grand council. If the accused admitted his guilt and his intention to reform, he was generally dismissed. If he denied being a witch, witnesses were interviewed. If, after investigation, the council was convinced of the accused's guilt, "condemnation followed with a sentence of death. The witch was then delivered over to such executioners as volunteered for the purpose, and by them was led away to punishment."[16] Treason was another offence that the nations took a direct interest in, and was handled in a similar fashion as witchcraft.

The Grand Council became involved in an offence committed by a member of one village against another village, if the leaders of these two communities were unable or unwilling to handle the situation.

It appears old people in ancient times were killed if they became too great a burden for their family, often upon the elder's request. After the league was formed, however, this practice became rare, the aged assuming important roles in the confederacy.[17] The very ill, crippled or very young were apparently killed in times of extreme necessity; cannibalism resorted to only if death by starvation was imminent. This was not a common practice[18] before the league's creation, and almost unheard of after.

A murder of an Iroquois by an enemy generally led to war, unless reparation was promptly made by the offending community to the victim's clan or nation.[19] War was not declared for revenge, but to allow the victim's spirit to find peace. Only when the life of an enemy was taken did the spirit cease to haunt the area.[20] The Iroquois themselves seem to have been willing to make amends if one of their number murdered an enemy in a period of declared peace or truce.

Captives seized during battle had one of two fates: torture until death brought merciful relief, or adoption into an Iroquois family which had lost a warrior. Prisoners frequently were made to suffer a beating or some other test of their bravery. If a captive showed himself to be hearty and courageous, he was usually treated with kindness.

Each individual owned his personal goods, such as clothing, weapons, and sleeping mats, and had a share in the property of the household and clan.[21] Anyone was free to cultivate an unused parcel of land and as long as he continued to use the land, his rights to it were protected by confederacy law. He did not, however, have absolute title to the land.

Houses were never locked, and any friendly person could enter and share in the household provisions. Thus, all unfortunate persons were spared starvation and exposure to the elements.

Material wealth in Iroquois society brought neither prestige nor power, except that a person could give more away. Therefore, there was little reason for theft. The only articles likely to be considered stolen were the medicines owned and guarded by individuals, and wampum belts.[22] If an individual stole, the violator of the community's trust was subject to public ridicule and anger. In these small villages where a person was likely to spend all his days, such a punishment was indeed effective. Theft was rare.[23]

The New Year's celebration or "Gi-Ye-Wa-No-Us-Qua-Go-Wa," provided an opportunity for permissible theft of articles. A "thieving party" of boys

> "strolled from house to house, accompanied by an old woman carrying a huge basket. If the family received them kindly . . . they retired without committing any depredations. But if no presents were made, or such as were insufficient, they purloined whatever articles they could most adroitly and easily conceal. If detected, they at once made restitution, but if not, it was considered a fair win. On the return of the party from their rounds, all the articles collected were deposited" in a public place where articles could be exchanged by their owners for something of equal value. A feast was then held with the proceeds of this procedure.[28]

Marriages were arranged by the clan mothers. Refusal by the woman to marry the selected groom at times resulted in disgrace or disownment. Young people were forbidden to speak to each other in public if of marriageable age; a prospective bride and groom were not permitted to see each other while negotiations for the marriage were going on.[25]

Divorce could be instigated by either party, but was discouraged by the community. Adultery was rare the punishment was public whipping or some other form of mutilation of the woman as ordered by the council after deliberation.[26] Polygamy was not allowed, nor was marriage within the clan.[27]

Children lived under the same rules as the adults, but were rarely reprimanded with more than a splash of water in the face, or a push. All adults took an interest in the children of their village, so that few actions went unnoticed. "Their elders always stood near to arbitrate their disputes and to apportion praise or blame, and no private chastisement in the home could have produced more effect than the outspoken reproof of the entire community."[28]

When compensation for an offence was determined, the whole clan or village contributed to the reparation in the form of gifts on a voluntary basis. The Iroquois believed that in addition to the powerful Great Spirit, all things in nature possessed a spirit, including the dead. If one of these spirits was offended, perhaps by the neglect or ridicule of some sacred ceremony, the spirit might select one man to show the people that they were erring by creating unusual behaviour in an individual. A spiritual adviser or pathfinder was then consulted to learn the cause and origin of the anger; an appropriate ceremony was then conducted to appease the offended spirit.

Thus, an offender was not exclusively punished for his first unacceptable acts, but rather the community assumed responsibility for reparation to the victim; all in the village or clan were seen as having contributed to the offence by their own misbehaviour. However, if a person continued to commit offences, after counselling and warnings, he might have been banished. The exile was marked on his left cheek or ear so that all he encountered would know of his misdeeds. The community would state to the exile on his departure that he would never find peace with the Iroquois, and that he should seek people of a like mind as himself.[29] A chronic offender might have also lost his life, having by his own actions removed himself from the protection of his fellows.

Societies of menfolk existed in Iroquois villages, members calling themselves uncles, and the people in the settlement nephews. In case of trouble, the members of the society from the offender's clan brought the difficulty to the whole family's attention. Family members then travelled to the location of the conflict and stayed until calm had been restored.[30]

A person able to escape punishment for his wrong actions in this life, risked suffering a dark world of punishments called "Ha-ne-go-até-geh." On death, a person's deeds were balanced, the weighing of good against bad deeds determining the need and extent of punishment. Witchcraft and murder were believed to be punished eternally. Other crimes led to temporary punishment, the completion of which would allow the person to pass on to the land of the Great Spirit and happiness.[31]

The women of the clan could remove a chief from office if he violated the sacred trust given him by his people and committed a crime. If he merely exhibited poor leadership qualities such as selfishness, he might have lost the cooperation of his people in carrying out his demands; his opinion would have carried less weight in council.[32]

For the ordinary citizen of the confederacy, small offences such as theft and ridiculing a woman in public were punished by ostracism. Such an offender was generally not considered for public honours such as leading a dance at one of the many seasonal festivals. A lengthy period of probation would have to pass during which time the one who had fallen out of public favour had to exhibit exemplary behaviour before his offence was forgotten.[33]

Festivals occurred regularly throughout the year in the settlements of the Iroquois. They gave those with responsibilities for the morals and spiritual well-being of the members of the league a chance to emphasize the principles of spiritual peace. These teachings included "the duty of living in harmony and peace, avoiding evil speaking, of kindness to the orphan, of charity to the needy, and of hospitality to all."[34] The people were reminded at such times that the Great Spirit would punish and reward their behaviour.

It was commonly felt that a great wrong committed by one person would bring punishment such as drought, famine or other scourge on the whole community. When such disasters befell the community, a general meeting was held before festivals such as the Planting Festival or "A-Yent'-wa-ta"; all were expected to confess any transgressions that could have aroused such anger from the Great Spirit, for the good of the whole community.[35]

Endnotes

1. Lewis H. Morgan, League of the Ho-He-No-Sau-Nee or Iroquois (New York: Burt Franklin, 1901, Volume I), p56.
2. Horatio Hale, The Iroquois Book of Rites (Philadelphia: D.G. Brinton, 1883), p21.
3. Morgan, League of, Volume I, p59.
4. W. McQuin, ed., Great Documents in American Indian History (New York: Praeger Publishers, 1973), p21-6.
5. Father J.F. Lafitan, Customs of the American Indians compared with the Customs of Primitive Times (Toronto: Champlain Society, 1974, Volume I), p292.
6. Hale, The Iroquois Book, p92.
7. Morgan, League of, Vol. I, p67.
8. McQuin, Great Documents, p22-3.
9. Morgan, League of, Vol. I, p67.
10. Lafitan, Customs, p293.
11. Morgan, League of, Vol. I, p178-9.
12. Morgan, League of, Vol. I, p322.
13. Morgan, League of, Vol. I, p322.
14. Tom Porter
15. Morgan, League of, Vol. II, p53.
16. Morgan, League of, Vol. I, p322.
17. ibid, p165.
18. W.I. Kip, The Early Jesuit Missions in North America (New York: Wiley & Puthan, 1846), p100.
19. Hale, The Iroquois Book, p68.

20. W.B. Newell, Crime and Justice Among the Iroquois Nations (Montréal: Caughnawaga Historical Society, 1965), p58.

21. Morgan, League of, Vol. II, p272.

22. Tom Porter

23. Morgan, League of, Vol. I, p324.

24. ibid, p204.

25. Kip, The Early Jesuit, p86.

26. Morgan, League of, Vol. I, p322.

27. Newell, Crime and Justice, p79.

28. Kip, The Early Jesuit, p152.

29. Tom Porter

30. Tom Porter

31. Morgan, League of, Vol. I, p163.

32. C. Colden, The History of the Five Indian Nations Depending of the Province of New York in America (London: Cornell University Press, 1969), pxx.

33. Tom Porter

34. Morgan, League of, Vol. I, p182.

35. ibid, p188.

Traditional Justice of the Huron

The Huron, or Wendat, were an imposing confederacy of four tribes, the (in English) Bear, Cord, Rock and Deer. This agricultural nation was comprised of semi-permanent settlements that existed from 12 to 20 years before the inhabitants moved on. Several families lived in one large dwelling; in spite of such communal living, conflicts within a village were rare.[1]

Huron communities were governed by captains or chiefs, each representing a family or clan. The captains divided war and civil administration among themselves. In the larger villages there could be several captains. These chiefs were the most suitable leaders, determined from among a select number with hereditary rights to the office. None had higher rank than another by virtue of position or family status.

However, a captain gained special influence from personal characteristics: intelligence, courage, generosity, and conduct. A chief could acquire such respect that treaties of peace with other nations could be struck in his name, on behalf of all the Huron.[2] Wishes of a chief were carried out voluntarily; he possessed no powers of force.

In Huron society sharing meant far more than food and accommodation. In case of offence against another, the whole village was held responsible, and in cases of offending another nation, all Huron accepted the shame as their own.[3]

Murder within a family was left to the members to resolve. The clan had the power of life and death over its own members in cases of murder, treason and witchcraft.[4] An execution within a clan was not questioned by outsiders, who assumed that there must be great cause to take the life of a loved one. The rest of the village comforted those were forced to commit such a final act of violence against their own kin.[5]

A murder between clans or villages, and especially the murder of a member of another friendly nation, was considered by all Huron who might be affected.

> "Each one takes up the cause of the dead man and contributes, in some wise, to requicken him (that is their expression) for the relatives embittered by the loss which they have just experienced. All interest themselves, also, in saving the criminal's life and putting his relatives in shelter from others' vengeance which would inevitably break out sooner or later if they should fail to give the satisfaction prescribed by their laws and usages in similar cases."[6] (italics are the source's).

In murder, reparation and comfort to the victim's family took the form of gifts presented by the village, tribe or nation. The offended party could demand the life of the murderer, but was more likely to accept the gifts as an end to the matter if the murderer showed sorrow.[7]

The victim's family indicated the quantity of gifts required to quench their grief and cries for vengeance by the number of sticks presented to the captain acting as mediator. The chiefs would then divide these sticks among themselves, each returning to his clan where residents would voluntarily fill their quota. The presentation of gifts was accompanied by great ceremony and speechmaking, indicating the seriousness of the event in the minds and hearts of the community. Up to 60 presents were supplied, a sentiment expressed for each one. The family of a murdered woman usually received more presents than for a murdered man; a woman was less able to defend herself and was the one who produced the future generations.[8] Thirty gifts have been reported as the usual number demanded for the murder of a male, and 40 for a woman.

Such pronouncements as "This is what I use to wipe off the blood from the wound," and "This is to put a stone over the opening and division of the land, made by the murder," accompanied the deliverance of the gifts by the captain.[9] Presents were usually wampum belts, the first few composed of as many as a thousand beads each — considerable worth.

If the victim's clan took the murderer's life against public sentiment, members might have been required to supply as many presents as they would have received from the offender's family.[10] This was probably an added incentive for the parties to come to an agreement, rather than seek individual revenge.

It appears that a more ancient form of punishment was occasionally demanded besides the gifts, one that was harder to bear than a speedy execution.

> "The dead man's body was stretched on poles in the air and the murderer was forced to stand under it and let fall on him the pus which flowed from the corpse. A plate, put beside him for his food, was soon filled with the filth which fell from above. To have this plate moved aside a little, cost him a present of seven-hundred beads of wampum. Finally, he remained in this wretched position as long as the dead man's relatives wished and had to give them a new present after he had won their consent."[11]

If spared this ordeal, the murderer would often leave the settlement once reparations had been made on the pretext of going to war to replace the dead man with a captive, returning after the grieving relatives had recovered their composure.

If a murder was particularly horrible, the council might have ordered the death of the murderer.

As a trading nation, the Huron were strongly opposed to harming or murdering a stranger in their midst. More presents were offered to a dead stranger's nation, if friendly, than for any other murder.[12] If reparation was not offered or accepted, war was the final answer.

Although the village or tribe assumed the responsibility for comforting the victim's family with gifts, the offender, if known, was condemned by the entire community for bringing such shame and hardship to their doorsteps. Murders were said to be rare.[13]

> "A man, aware that the crime which he is going to commit would have to be of concern to the whole village, because of the number of presents (which will have to be supplied) to which all the public contributes, should, if he is capable of thought, find it very difficult to make up his mind to an action which places a burden on everyone; and this type of payment for his crime will, doubtless, appear the effect of an admirable policy, capable of restraining the most violent men."[14] (italics are the source's)

An individual believed to be a witch or traitor was usually declared to be such by the chiefs; he would lose the protection of the community and anyone could kill him without fear of reprisal or need to repay his family.[15]

Theft was considered a serious matter, although theft was narrowly dfined. An object was considered stolen if it was taken without permission from a dwelling place. If an article was found outside the home, it was considered abandoned and available to anyone. If a person was suspected of having a stolen object in his possession, a certain procedure was to be followed. First, the person under suspicion had to be asked where he got the item. If he replied that

> "he received it as a gift, or bought it off someone, he must tell the name of him who gave or sold it to him; then the other goes to find the seller, puts the same question to him; and if this one names him another he goes to find him and continues the investigation until he finds one who has it from nobody. In this, and in similar things they display great sincerity; never naming an innocent man; while the guilty one, through his silence, confesses himself the culprit."[16]

If convicted of theft, the thief was liable to give his and his family's possessions to the offended party, no matter the value of the article in question.

The laws of the Huron were flexible, and reparation or punishment depended upon the circumstances of the offence and offender. Father Bressani in 1653 remarked upon the Huron in Lower Canada:

> "It is the public that gives satisfaction for the crimes of the individual, whether the culprit be known or not. In fact; the crime alone is punished, and not the criminal; and this which elsewhere would appear injustice, is among them a most efficacious means for preventing the spread of similar disorders."[17]

Endnotes

1. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 1963, 6th Edition), p289 & 291.
2. R.G. Thwaites, ed., The Jesuit Relations and Allied Documents, Travels and Explorations of the Jesuit Missionaries in New France 1610-1791 (Cleveland, Ohio, 1896), Volume X, p229.
3. ibid, Volume XXXIII, p233.
4. George Sioui.
5. J.F. Lafitan, Customs of the American Indians compared with Customs of Primitive Times (Toronto: The Champlain Society, 1974, Volume I), p301.
6. ibid, p303.
7. R. Douville et J-D. Casanova, La Vie Quotidienne des Indiens du Canada a l'époque de la Colonisation Française (Paris: Hachette, 1964), p66.
8. Thwaites, Jesuit Relations, Volume XXXIII, p234 & 239.
9. Lafitan, Customs of the American Indians, p303.
10. ibid, p304
11. ibid.
12. Thwaites, Jesuit Relations, Volume XXXIII, p243.
13. ibid, Volume XXXVIII, p269.
14. Lafitan, Customs of the American Indians, p305.
15. C. Heidenreich, Huronia: A History and Geography of the Huron Indians, 1600-1650 (Toronto: McClelland and Stewart, 1971), p80.
16. Thwaites, Jesuit Relations, Volume XXXVIII, p271.
17. ibid, p275.

The Contest Moves Inland

The Maritime Indian nations were absorbed in the climax of the war for supremacy between the French and English. The struggle spread to the land of the woodland Indians around the north of the Great Lakes. It was here that the death blow to French aspirations and Indian independence fell. The centuries that elapsed before British supremacy was secured were ruinous for the Indians. While some tribes were broken in number and spirit during this era, others, such as the Neutrals and the Eries, were completely extinguished.

Just as the territory, population, economic base, and independence of the tribes were reduced, so were their rights to handle internal problems and mete out justice. The two European powers gradually overtook aboriginal justice, firmly planting white law in its place. The ways the white nations made this change were quite different, and can be understood in light of their more general relationships with their Indian allies.

French settlement spread from the eastern shores to Québec, headquarters for the French colonial government, and into the reaches beyond. The French allied themselves with those they found there, and established a regular and personal rapport with their Indian neighbours. The Huron, Ojibway and Algonkian tribes found French settlers, the Roman Catholic Church, and the fur trade in their midst.

The English established themselves first and foremost in the area to be known, not surprisingly, as New England. Their relationship with their distant Indian allies, the Cree, just southwest of Hudson's Bay, and the Iroquois, whose territory was the strategic southern Great Lakes, was strictly of a military and economic nature for many decades. The English maintained a formal and aloof attitude in their dealings with their Indian associates.

As the fur trade expanded west, several Indian nations became middlemen. These tribes became successive buffers between the westerly spread of European trade, settlement and feuding, and those tribes not yet in full contact but already in possession and need of European goods. The Algonkian bands were extensively bartering with the French by the late 1500s. In the early 1600s, the Huron confederacy became the middlemen in the French fur trade, only to be replaced by the Ottawas after 1650. The Ottawas then began a westward trek as far as the site of modern-day Detroit. The Ojibway, occupying the basin of Lake Superior and adjacent regions, emerged as imposing allies and traders with the French during the late 17th and early 18th centuries. The Cree, traditionally resident only in the north central woodlands, obtained weapons from a new ally, the Hudson's Bay Company, which was granted monopoly rights by the British Monarch in 1670. An expansion across the northern Prairies began a movement that revolutionized Cree culture, and created new and formidable enemies. The temporary power of each nation was based on their immediate and superior supply of European goods and firearms.

The relationship between the Indian nations and their European allies was determined by the period and circumstances of contact. This also determined the degree of observation and enforcement of European laws.

Champlain reached an agreement with the Huron in 1616 formalizing their early allegiance to the French crown. For any European nation hoping to dominate the fur industry the Huron were a crucial ally, having been traders with other tribes from before AD 900.[1] Within 45 years of aligning themselves with the French, disease and battle with the Iroquois vanquished the Huron.

During the brief time of Huron ascendancy as middlemen, however, relations with their European suppliers were not always smooth. Murders of Frenchmen, in particular, strained relations. At first, the French accepted the Huron's approach to resolution. Father Brebeuf noted that when his domestic was killed in the 1640s, the Huron offered presents as satisfaction and consolation for the murder.[2]

On occasion, a group of Huron set out with the intention of slaying the first Frenchman they met to obtain satisfaction for a violent offence. It was not necessary in traditional Huron justice to execute a murderer, especially if he were not known but his nationality was. The dead man's spirit was thought to be satisfied by the demise of one of his enemy. The French were often unaware of this different policy, and took these deaths to be indiscriminate murders.

The Huron found themselves subject to the government and laws of Canada (the term for the French nation) within a few short years of contact. In the 1680s, Adario, a notable Huron chief, stated:

> "For these fifty years, the governors of Canada have alleged that we are subject to the laws of their great captain. We content ourselves in denying all manner of dependence, excepting that upon the Great Spirit, as being born free and joint brethren, who are all equally masters. Whereas you are all slaves to one man."[3]

Despite such objections, whites increasingly viewed the laws and government of the Huron as inferior as contact with the French became more intimate and over-powering.

After 1649, Huron fortunes dwindled; those Huron who remained alive and at liberty were widely scattered. Some lived as far southwest as Oklahoma; some sought refuge with allies who in turn were defeated by the Iroquois; some mingled with their enemy; and, a number settled outside Québec City under the protection of the French.[4] Those who fled southwest were to make one last effort to stem the tide of the English advance west.

The Ojibway were introduced to the Europeans by 1612, and were included in the treaty of 1671 at Sault Ste. Marie between the French and their Indian allies. The arrival of the white man and the consequences of the arrival were of little surprise to the Ojibway.

> "The Ojibways affirm that long before they became aware of the white man's presence on this continent, their coming was prophesied by one of their old men, whose great sanctity and oft-repeated fasts, enabled him to commune with spirits and see far into the future. He prophesied that the white spirits would come in numbers like sand on the lake shore, and would sweep the red race from the hunting grounds which the Great Spirit had given them as an inheritance. It was prophesied that the consequence of the white man's appearance would be to the An-ish-in-aub-ig, an 'ending of the world'."

With allegiance to the French came guns and more vicious and destructive warfare. As the tide of white trade swept west, so did the Ojibway, their territory expanding into all directions.

The Ojibway basked in autonomy during this era, being faithful associates of the French and partners in the fur trade. Interference in Ojibway affairs was initially rare, unless a violent act was committed against a Frenchman. Such incidents occurred with each French advance into the Ojibway domain. It was made strikingly clear on each occasion that French justice was to predominate over Ojibway if a Frenchman was attacked.

In 1638, Jacques Le Maire and Colin Berthot were slain by three Ojibway at Sault Ste. Marie. One killer was captured and imprisoned by the indignant French. The French governor called the Ojibway chiefs together and in a general council urged them to surrender the two fugitives, warning that the whole nation would otherwise suffer the consequences. The fugitives were produced and a court was convened where each was permitted two relatives as defence witnesses. Evidence was recorded and read back to the witnesses to affirm its correctness. The prisoners were, it would seem, obviously guilty; "seeing the prisoners had convicted themselves, the chiefs in the council said, 'It is enough, you accuse yourselves; the French are masters of your bodies'."[6]

Notably, it was the French alone at the Sault who officially determined the guilt of the three accused. The governor and the Jesuit Senior condemned two of the offenders to death. The French summoned many of the chiefs of the Ottawas, Ojibways (Chippewa), Huron, and several Algonquin tribes, to witness the execution. No doubt the French hoped the exhibition would convey to their Indian affiliates the consequences of harming a Frenchman. Formal involvement of the Catholic Church was included to ensure the example had its full effect.

William Warren, an Ojibway half-breed, reported an incident in the northwestern reaches of Ojibway territory, where contact with the French was still minimal. A coureur du bois employed at the Lac Coutereille post was murdered one winter in the mid-1700s by an Ojibway. Although this was unusual, the French in the district decided to emphasize the inadvisability of attacks by Indians against their white "brothers". The village in which the murderer lived was warned by the head trader that it must turn the culprit over to the French, or all trading would cease: a dangerous possibility for the now economically-dependent Ojibway. The following spring many Ojibway from surrounding districts gathered to watch the war chief, Ke-dug-a-be-shew, deliver the accused to the French trader, Mon. Cadotte. The trader's clerks formed a jury and found the accused Indian guilty and deserving of death in the form the murder took — stabbing by knife. The relatives, according to Ojibway custom, offered beaver skins in return for the life of the offender. This reparation was rejected, and the execution proceeded as ordered.[7]

The French were successful in maintaining that their law was the only way to settle violent offences against their countryman. As a relative of a victim could demand the life of the murderer, the early approach of the French was compatible with traditional Ojibway justice.

As the grip of the French tightened, and the Ojibway were more often tried under French law, some chiefs objected. The Catholic Church converted many Indians within the allied nations; some Christian Indians realized that their old ways were being lost in conversion, and felt that their new religion should not influence their legal and constitutional autonomy.

Chief John Jones stated at a general council meeting of the Ojibway and Ottawas:

> "As we (the Christian part of the nation) have abandoned our former customs and ceremonies, ought we not to make our own laws, in order to give character and stability to our chiefs, as well as to empower them to treat with the government under which we live, that they may from time to time, present all our grievances, and other matters to it?[8] (italics are the source's)

The Ojibway — as formal allies of the French — fought on the French side in the final battle at Québec and suffered severe losses. It became immediately apparent that the English considered the Ojibway to be merely subjects or soldiers of the Canadiens, not allies. They did not think to make a separate treaty with the Ojibway nation, and insulted and enraged these bands by this serious oversight.

While travelling through Michillimackinac in 1761, Alexander Henry was confronted by Minavavena, chief of the Ojibway, known to the Canadiens as Le Grand Sauteur. He gave a bitter speech to the English trader, showing Ojibway justice was still nurtured and upheld.

> "... Englishman! Although you have conquered the French, you have not yet conquered us! We are not your slaves. These lakes, these woods and mountains, were left to us by our ancestors. They are our inheritance, and we will part with them to none. Your nation supposes that we, like the white people, cannot live without

> bread, and pork, and beef! But, you ought to know, that He - the Great Spirit and Master of Life - has provided food for us, in these broad lakes, and upon these mountains.
>
> "Englishman! Our father, the king of France, employed our young men to make war upon your nation. In this warfare, many of them have been killed; and it is our custom to retaliate, until such time as the spirits of the slain are satisfied. Now the spirits of the slain are to be satisfied in either of two ways. The first is by the spilling of the blood of the nation by which they fell; the other by covering the bodies of the dead, and thus allaying the resentment of their relations. This is done by making presents.
>
> "Englishman! Your king has never sent us any presents, nor entered into any treaty with us. Wherefore he and we are still at war, and, until he does these things, we must consider that we have no father, nor friend, among the white men, than the king of France . . . "[9]

By 1720, the Indian nations allied with the French amalgamated in a loose alliance or confederacy. The Huron, Ojibway, Ottawas, and Potawatomis met regularly in grand council to discuss territorial boundaries and other issues of common concern, including war. The Huron were the record keepers and mediators in case of disputes between members. Within the alliance was a more formal, lasting confederacy referred to as the Council of the Three Fires, of the Ottawas, eastern Ojibway, and Potawatomis. The Council remained vital after the early dispersal of the Huron, and continued as staunch allies of the French.

The French became visible mediators in settling disputes between Indian clans and nations. For example, Champlain discovered that a treaty of friendship with the Huron had no sooner been negotiated than serious dissension surfaced with the Algonkin. It would seem that the Huron delivered a prisoner of a common enemy into the hands of the Algonkin in the expectation that punishment would ensue in the usual fashion. To the horror of the Huron, the Algonkin chief not only gave the prisoner his liberty, but treated him as his own son. An executioner sent by the Huron slew the prisoner, and was in turn killed by the Algonkin. A number of skirmishes followed, endangering the alliance.

Fearing for their continued existence, the Algonkin eventually paid 100 fathoms of wampum, kettles, axes, and two female prisoners in return for the life of the executioner. However, their bitterness remained and open confrontation seemed imminent.

The French feared ruin for their plans for the continent if war broke out among their Indian allies. Champlain eagerly responded to a request by the chief of the Algonkin to intervene. Both sides submitted to arbitration, promising to abide by the decision of Champlain. After allowing each side to air the issues fully, the Champlain suggested that the matter should be considered equitably closed, and that all ill-feeling should be set aside. This apparently was agreed to by both nations[10]

Mechanisms for administration of justice existed in the French colonies, referred to as Canada, from the time of the first settlements. In 1613, Champlain was granted a mandate by the French Crown to settle Québec and other districts of New France. He was to commission officers to maintain civil order, enforce regulations and ordinances, and ensure the treaties with Indian allies were maintained. If the Indians did not uphold their part of the bargain, the officers were to "make open war with them, to restrain them and bring them to reason."[11]

By the mid-1600's, a tribunal administered the affairs of state in the colonies. The governor was the nominal head of the government and responsible for military matters and external relations; the Bishop of the Roman Catholic Church for the colony was the second member of the tribunal, linking the Church closely with French political and economic interests. An "intendant" completed the executive and was responsible for justice, finance, economic development, and government administration.[12]

By 1684, the system of justice in Québec was more refined. A Sovereign Council of 12 heard all legal cases, with no outside source of appeal. Both the Intendant and the Governor presided over the court. No lawyers were allowed to appear, each person pleading his own case.[13] It is unclear whether accused Indians were ever brought before the Sovereign Council.

The French approach to frontier justice was considerably different from the English approach. The French tended to intermix with their Indian allies, respecting and adopting many local customs and values. Legal conflict came early as a result of the extensive contact, but was usually restricted to incidents involving the two groups. Any attack on a Frenchman was swiftly and harshly dealt with by the French military, using its own definitions and sanctions. Little more than a summary investigation was necessary for execution to take place immediately and publicly.

The English maintained a distance from their Indian allies. Judicial confrontation occurred much later than with the French. Contact was infrequent and formal. When a violent act was committed against an Englishman by an Indian ally, English law was officially and painstakingly applied. Offences by Indians against the British were prosecuted through civil courts, a tedious and uncertain process. English justice did little more than "excite(d) the wonder and provoke(d) the contempt of the Indians."[14] (italics are the author's).

The French method of imposing justice was much more compatible than the English approach with Indian traditional justice. Whereas the French imposition of law was understandable to their Indian allies, the English law was seen as bizarre.

The Iroquois' contact and alliances with Europeans was complex and frequently difficult to trace. It would appear that the Dutch who settled in the area now called New York were the first white men to have friendly relations with the Five Nations. This liaison occurred between the late 1500s and early 1600s. Iroquois alliance with the English, peace treaties with the French, and splits of allegiance within the confederacy mark the various eras of interaction with white men during this time.

An event during the first stage of contact between the Iroquois and the French created such a deep rift that it prohibited the possibility of the two ever becoming allies. Champlain and his party shot several Iroquois leaders in 1609. The circumstances of this tragedy were variously reported, and each version seemed to depend on the allegiance of the historian. Nevertheless, it is clear that this incident, coupled with the kidnapping of several Mohawk chiefs by Cartier earlier, led to direct confrontation between the two nations for more than 150 years; this lasting animosity contributed substantially to the eventual defeat of the French.

The alliance formed with the British in 1644 was never broken by the Iroquois in the years before the demise of France. The British, however, on several occasions urged the Iroquois to attack the French or their allies, and then failed to join in the foray themselves.[15] It was these desertions that spurred the Five Nations to make occasional treaties of peace with the French.

Unlike the French, the English did not intermarry to any degree with their Indian allies.[16] Unlike the French, the English made little effort at this point to convert Indian allies to Christianity. As a result, the values, religion, and power structures of the Iroquois were not eroded as extensively as some other tribes in the central and eastern regions.

During the 150 years of European presence, the peace created within the Six Nations was never broken, even in the face or murder.[17] The constitution and laws of the confederacy were so effective that they maintained harmony between their member nations when all around them ancient rules and societies were crumbling.

However, the involvement of white men did change Iroquois settlements. Perhaps the most damaging effect was the introduction of strong, adulterated alcohol.

> "It filled their villages with vagrancy, violence and bloodshed: it invaded the peace of the domestic fireside, stimulated the fiercest passions, introduced disease, contentions and strife; thus wasting them away by violence, poverty and sickness, and by the casualties of hunger and cold."[18]

By 1724, Father Lafitan recorded that the society of the Iroquois nations had changed drastically.

> "Some of the Iroquois themselves assured me that they had always lived with a great deal of simplicity and decorum. I have often heard the old men and women

complain that an irregularity of mores, unknown in their day and which made them hardly recognize their tribe, has arisen among them."[19]

By the mid-1700s there were formal declarations against the liquor trade at meetings between the Six Nations and the British. In 1754, a Mohawk chief delivered the following lament:

> "There is an affair about which our hearts tremble; this is the selling of rum in our castles. It destroys many both of the old and young people. We request of all the governors here present, that it may be forbidden to carry it among any of the Five (Six) Nations."[20] (italics are the author's).

A person who committed an offence while drunk was not held responsible for his behaviour, as he was seen as not in his right mind by his own people.[21] This likely affected the traditional Iroquois peacekeeping to some extent, creating a foreign and unmanageable kind of dissension and disturbance in the community.

In early agreements with the Dutch, English, and later, the Americans, the Iroquois demanded the right to their own laws and constitution. To the Iroquois it was clear from the beginning that they were equal to the Europeans. In discussions with white men, the Iroquois referred to whites as "brothers" or "brethren." Other tribes referred to whites as "father" and themselves as "children."

The Iroquois recorded laws, treaties, and agreements on strings or belts of wampum. The Onondaga sachem was responsible for keeping the belts and ensuring that the exact wording of agreement was kept by a tribesman so it could be passed on intact through the generations. The Onondaga nation recorded an agreement between white men and the Six Nations that the laws of the Iroquois would always remain in force. This agreement may well have been the treaty of 1754 with the British.[22] The Belt of Law, or Two Road Wampum, was represented by two black parallel lines on a belt with a white background.

> "The two paths are the Law of the Six Nations and the Law of the whiteman. The two lines do not meet, which indicates that the two sets of laws must always run by themselves and never touch; the field of white means that they can be of peace."[23]

This agreement later resurfaced when the British flagrantly disregarded the agreement, and it continued to haunt the violators for centuries.

The Iroquois gradually surrendered land to the British, but there was often serious encroachment on land not ceded. Seneca leader Canassateego complained about trespassing to Pennsylvania officials in 1742, accusing the British of settling and hunting on unceded Iroquois territory. He noted that the Iroquois sachems had complained about trespassing repeatedly, without success:

> "... We have bought it with our blood, and taken it from our enemies in fair war; and we expect as owners of that land, to receive such consideration for it as the land is worth."[24]

Before the defeat of the French, many promises made by the British were repeatedly broken, despite the faithful support of the Iroquois under the direst circumstances. This ill-treatment and neglect was to have serious consequences.

From the first contact with Europeans, major changes in boundaries, alliances, power structures, values, lifestyles, and legal and political autonomy occurred among the central Indian nations. When the finalé of the European struggle occurred, the toll was appallingly evident. Many Indian nations had been exterminated, others reduced in power and numbers through disease, warfare, and white encroachment. Some tribes appeared to have chosen the winning side, and they expected to be treated as allied nations and victorious brothers. They would be sorely disappointed. The defeated remained powerful adversaries, refusing to recognize the new European force in their lives.

The British Colonial era would cause further changes. As had happened in the east, Indian status would suddenly decline from feared enemy or crucial ally, to a barrier, an annoying impediment to the advance of "civilization," or white expansion. The laws of the European before the Peace of Paris in 1763 contained the actions of Indian allies; after 1763, British law would control the lives of Indian "subjects."

Endnotes

1. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ontario: Collier-Macmillan Canada, 1976), p67.

2. R.G. Thwaites, ed. The Jesuit Relations and Allied Documents, Travels and Explorations of the Jesuit Missionaries in New France 1610-1791 (Cleveland, Ayah, 1896), Volume 32.

3. W.B. Newell (Ta-lo-Wah-Ron-Ha-Gai), Crime and Justice Among the Iroquois Nations (Montréal: Caughnawaga Historical Society, 1965), p23.

4. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 1963, 6th Edition), p299.

5. W.W. Warren, History of the Ojibway Nation (Minnesota: Ross & Haines, 1957), p117.

6. ibid, p413.

7. ibid, p294-7.

8. ibid, p149.

9. W. McQuin, ed., Great Documents in American Indian History (N.Y.: Praeger Publishers, 1973), p122-3.

10. Samuel de Champlain, The Voyages and Explorations of Samuel de Champlain (1604-1616) (N.Y.: A.S. Barnes & Co., 1906), Volume 2, p103-113.

11. ibid, p47.

12. J.M.S. Careless, Canada, A Story of Challenge (Toronto: Macmillan of Canada, 1963), p49.

13. Louis Armand Lahontan, Lahontan's Voyages (Ottawa: Graphic Publishers, 1932), p10.

14. Francis Parkman, The Conspiracy of Pontiac and the Indian War After the Conquest of Canada (Toronto: The Museum Co., 1886, Tenth Edition), Volume I, p76-77.

15. Cadwallader Colden, The History of the Five Indian Nations Depending on the Province of New York in America (London: Cornell University Press, 1969), Part 1, p327.

16. Parkman, The Conspiracy of Pontiac, Volume I, p79.

17. Horatio Hale, The Iroquois Book of Rites (Toronto: Coles Publishing Co., 1972), p70.

18. Lewis H. Morgan, League of the Ho-He-No-Sau-Nee or Iroquois (N.Y.: Burt Franklin, 1901), Volume I, p325.

19. J.F. Lafitan, Customs of the American Indians compared with Customs of Primitive Times (Toronto: Champlain Society, 1974), Volume I, p350.

20. Morgan, League, Volume I, p326.

21. Newell, Crime and Justice, p60-61.

22. Claim of Six Nations Indians to be Recognized as a Separate Nation, 1900 (Ottawa: Canadian Archives, Indian Affairs Document, Matheson's Blue Book, RG10, Volume 10027).

23. Wampum Belts (Onchiotax, New York: Six Nations Indian Museum).

24. McQuin, Great Documents, p121.

PART III
THE BRITISH COLONIAL PERIOD
1763 to 1867

The Dye is Cast: British Rule in the East

The British victory in North America shattered the Maritime tribes, the allies of the French. All pretence of protection of the eastern Indians by the British was dropped, and the vultures descended.

Despite the promises of the English monarch's Proclamation of 1763 safe-guarding aboriginal land, ancient tribal grounds became the white's without treaty or purchase. The British seized Indian land in defiance of the Royal Proclamation.

White laws were enacted in attempts to prevent trespass on the small pockets of lands reserved for the Indians. These laws were both corruptible and ineffective. Their application depended on circumstances and profit; colonial laws were disregarded by the European population surrounding the Indians of the Dawn.

A small tribe of hunters and fishermen called the Beotuk inhabited Newfoundland. From the earliest contact, the Beotuk were treated as little more than game of the forest by the white men they met. A bounty was placed on the heads of these Newfoundland Indians during the European war; the French even went so far as to equip Micmacs and transport them to the island to slaughter the Beotuk.

Murder of the Beotuk became so widespread during the 1700s that the British authorities issued proclamations in 1769, 1775, and 1776 warning that the colonists must stop their wanton killings. These declarations made note that rarely was there cause for this barbarous behaviour, and that little remorse was evident on the part of the murderers. Officers and magistrates received instructions to seize any colonists who murdered a Boetuk, and to return the culprits to England for trial.[1] The degree of disregard of Europeans for their own law is signified by the complete extermination of the original inhabitants of Newfoundland; the last of these unarmed people, Nancy Shawanahdit, died in captivity in 1829.[2] This genocide may have served as a warning to the other tribes concerning the impotence of white law in protecting aboriginal people.

The Maritimes were in effect an occupied territory, particularly in the populated areas of Nova Scotia. Many Micmac migrated en masse after the British gained irrevocable control of their country. The Micmac were only too familiar with the vengeance of the British against Indian allies of the French; upon their return from the final battle in Québec, a number of chiefs led their people onto the island of Cape Breton, thinly inhabited by whites. The migration was organized by Chief Tomah Denys of Cumberland county, who had led the Indian soldiers in the battle of 1759 against the British.[3]

Despite such regrouping, the eastern tribes were quickly placed under British colonial administration. In 1768, the province of Nova Scotia became responsible for the administration of Indian Affairs. (Nova Scotia included New Brunswick until 1784.) The colonial government was neither financially nor administratively prepared for such a sudden responsibility.

By the close of the 18th century, the Micmac had become economically dependent on the English colonists. The scarcity of game caused rampant starvation; the lack of resources and unwillingness of the government to spend funds on Indians forced some Micmac in desperation to beg food from door to door in white villages. In spite of their extreme poverty, the Micmac maintained their abhorrence of theft, rarely stealing even when in dire need.[4]

White consciences were soothed with the establishment of reserves, hailed as the solution to Micmac woes. The Executive Council of Nova Scotia issued a proclamation in 1773 announcing the isolation of the Micmac on tiny pockets of land under the direct administration of the colonial authorities. By the mid-1830s, the reserve scheme was largely completed, the Micmac "forced to settle down or starve".[5]

Not surprisingly, the plight of Nova Scotia Indians did not improve with the creation of reserves, and indeed, often deteriorated. In 1846, the provincial Commissioner of Indian Affairs, Mr. Gesner, stated in his annual report that

> "almost the whole Micmac population are now vagrants, who wander from place to place, and door to door seeking alms ... (I received) a letter from the members of the County of Sydney setting forth the destitute and starving conditions of the Indians in that county."[6] (italics are the author's)

The foul circumstances in which the eastern Indians were forced to live was partly attributable to the inability of the local government to proffer aid. The administration of Indian affairs was in such a state of crisis that the Lieutenant-Governor ordered a study of the situation and a census of the Micmac population in 1807. Twelve men were eventually appointed to act both as observers and agents of the government in times of emergency with regards to the aboriginal peoples.

Supervision of Indian affairs remained with the elite central government in Halifax throughout this period. Rigid regulations were imposed by the Council to control the daily lives of the Indians. The regulations included requirements such as needing government permission to build a fence, barn or road on the the reserve. Petitions for such minor endeavours were at times denied by Halifax. And yet, this central white authority seemed unable or unwilling to prevent deliberate and frequent trespass by white settlers on reserves, and occasional outbreaks of violence by settlers.

In his annual report, Mr. Gesner recorded a number of letters:

> "complaining that forcible possession, in a most high-handed manner, has been taken of part of the Indian reserve at Whycocomagh, and that personal violence to the Indians is threatened."[7]

The reserves were mostly located on barren and dry locations, and what little land useful to the Indian band was seized by local whites, seemingly without fear of reprisal.

Sketchy information about Maritime Indian life during the British Colonial period refers to colonial law. It appears that the effect of white justice was directly related to the extent of white settlement. The greater the contact, the more likely the political and legal interference by the British.

The Micmac, it would seem, were methodically brought under the arm of British justice, starting with the agreements signed under compulsion with the English during hostilities. Periodically, the chiefs themselves would petition for white law to deal with the white trade in liquor. Despite a popular Indian pledge of abstinence from alcohol, liquor continued to take its toll. Vendors could still make a tidy profit. In 1829, an Act to Regulate the Sale of Spirituous Liquor to Indians was passed in the Assembly of Nova Scotia in response to a petition by 18 Micmac chiefs in the western half of the province.[8]

Tribes isolated from the direct colonial government supervision escaped the sharp edge of white law and enforcement. Indian nations such as the Naskapi adapted to the conquest of their country by incorporating new ways with their own traditions.[9]

The Naskapi maintained their hereditary life-style, remaining on their reserves for only three months in the summer, spending the remainder of the year in the bush, hunting and trapping. Ancient justice survived and blended with white legal principles and procedures.

The shaman and the chief shared their judicial roles with recent arrivals, particularly the Hudson's Bay managers. The manager was on occasion called upon to mediate a dispute, as his post was often located in the isolated winter quarters of the Naskapi. The fur trader, in accordance with traditional justice, and out of a desire to maintain the good graces of the Naskapi, would take pains to ensure that his intervention was in line with public opinion; he would also assure himself that little doubt existed as to the guilt of the accused.[10]

The Abnaki league which traditionally established common laws regarding intertribal relations and territory continued until at least 1872.[11] The ultimate death of the confederacy may have been in part due to the establishment of reserves. Tribal territories had been irrevocably emarcated and reduced by the white authorities, disallowing any regulation by an Indian coalition of nations.

Other tribes such as the Malecite, Montagnais, Passamoquoddy, and Algonquin, were escorted onto small, scattered reserves after disease and warfare had critically reduced their numbers.

There is little else so indicative of a people's fate than a scarcity of information. So it is with the Indian tribes of the east. From the moment that the French signed the articles of defeat, their Indian allies plunged to the status of the conquered in the eyes of the British. The effects of the British conquest on the Indian societies of the east remains largely unrecorded. It remains for the People of the Dawn to tell their story.

Endnotes

1. Indian-Eskimo Association of Canada Legal Committee, Native Rights in Canada (Toronto, 1970), p72.
2. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 6th Edition, 1963), p267.
3. Frank Speck, Beotuk and Micmac (New York: Museum of the American Indian, Heye Foundation, 1922), p108.
4. J. McLean, Canadian Savage Folk: The Native Tribes of Canada (Toronto: William Briggs, 1896, Reprinted by Coles Publishing Co., 1971), p4.
5. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ont.: Collier-Macmillan Canada, 1976), p65.
6. Journal of Assembly Records, Nova Scotia, edited by the Union of Nova Scotia Indians, Sydney Office.
7. ibid.
8. ibid.
9. J.E. Lips, Naskapi Law (Lake St. John & Lake Mistassini Bands) (American Philosophical Society, Lancaster Press, 1947, Vol. 37, Part 4), p399.
10. ibid, p482-4.
11. W.D. Wallis, and R.S. Wallis, The Micmac Indians of Eastern Canada (Minneapolis: The University of Minnesota Press, 1954), p225.

Might is Right

The formal end to hostilities between the French and English forces on the North American continent did not include peace treaties with the central Indian tribes allied with the French. This critical oversight, this final abuse by the British, sparked an Indian uprising of a magnitude rarely witnessed.

The Pontiac uprising, as this last struggle against a sealed fate became titled, was fuelled by the general treatment of the central tribes by the British victors.

At best, the Indian allies of the French were ignored, and at worst, abused in a negligent and barbarous fashion. European supplies, referred to as presents, were either reduced, stolen or cut off altogether by the British in their rush to reduce costs of the North American occupation.

> "This sudden withholding of these supplies was, therefore, a grievous calamity. Want, suffering and death, were the consequences; and this cause alone would have been enough to produce discontent."[1]

Moreover, British traders felt at liberty to cheat, rob and ridicule the French allies upon the fall of their European suppliers. Indeed, the general opinion held by Indians about Englishmen in the eyes of these tribes needed no further downgrading. These same traders had made it a practice

> "to purchase convicts and hire men of infamous character to carry up their goods among the Indian, many of whom ran away from their master to join the savages. The iniquitous conduct of those people essentially injured the English in the opinion of the Indians, and fired an odium which will not be soon or easily removed."[2]

Even the Indian confederates of the British did not escape treachery. The encroachment of British settlers on Indian land in clear violation of agreements and treaties contributed significantly to the pending upheaval.

The French in the central region encouraged the smouldering resentment of the tribes along the frontier. The stage was set for an uprising; all that was needed was a leader: Pontiac.

As the principal Ottawa chief of the Council of Three Fires, Pontiac was respected throughout the land of the Illinois, Delaware, Hurons, and the Iroquois. He was a prophet of repute among the nations of the Algonquin. He espoused a return to the old ways, warning that white men must be driven from Indian domain if stability and the light of the Great Spirit were to abide in their communities once again.

Minor rebellions of the frontier nations were attempted and thwarted in 1760 and 1762.

The announcement that the King of France had ceded all Indian land to the British Crown without the opinion or consent of the rightful owners ignited the central tribes into a united last stand.

At the time of the French defeat, forts had been established throughout the interior to form communications links and hold the territory for the English Crown.[3] Pontiac and the nations following him stormed the British forts, with the full expectation of French support. The French, however, were noticeably absent from the foray.

The Pontiac uprising was conducted with a mixture of traditional and adopted warfare techniques. Customary guerilla warfare involved small skirmishes in which the Indian warriors avoided direct confrontation unless sure of victory. However, the siege of Fort Detroit was a tactic previously unknown among these tribes.

Eight hundred and twenty warriors, comprised of Ottawas under Pontiac's leadership, Potawatomis under Ninivay, Hurons under Takee, and Ojibways under Wasson and Sekanos, surrounded the fort for several months[4] The siege was in the end unsuccessful. Nine forts did fall to the warriors of these and other nations, including the Senecas of the Iroquois, and the Delaware.

At first, the outbreak of hostilities was taken lightly by the Commander-in-Chief of the British forces in America, Amherst. But, as the uprising became widespread and successful, anxiety and rage replaced his initial disbelief and amusement.

Amherst's correspondence with Colonel Bouquet, his man in the field, indicates the desperate measures he deemed necessary in controlling the "barbarians."

> "It remains at present for us to take every precaution we can, by which we may put a stop, as soon as possible, to their committing any further mischief, and to bring them to a proper subjection; for without that, I never do expect that they will be quiet and orderly, as every act of kindness and generosity to those barbarians is looked upon as proceeding from our fears."[5]

Later, in June, 1763, Amherst recommended outright extermination of the "vermin from a country they have forfeited, and, with it, all claims to the rights of humanity ..."[6]

In the summer he ordered his commanders in the frontier to take no prisoners; an Indian needed only to have been found with arms upon his person to qualify for execution on the spot. A few days after this command, Amherst added a postscript to one of his missives: "Could it not be contrived to send the Small Pox among those disaffected tribes of Indians? We must on this occasion use every stratagem in our power to reduce them".[7] Upon the expression of interest by Bouquet in such a plan of destruction, Amherst sunk to particulars: "You will do well to try every other method that can serve to extirpate this execrable race."[8]

Amherst's diabolical schemes to taste victory won the day. By October 12, 1763, the Ojibway, Huron and Potawatomis had bid for peace through Wapocomoguth, chief of the Mississaugas, a branch of the Ojibway.

Throughout the winter and into the spring of 1774, Sir William Johnson made treaties with the tribes. All treaties were negotiated separately, and at no point was a general council of all the tribes convened. Those who agreed to peace with the British were forced to promise that the English king would be referred to as "Father" instead of "Brother". They were no doubt "unconscious of any obligation which so trifling a change could impose"[9]

During the course of the conflict, at least 2,000 whites were killed or taken prisoner, including 100 traders.[10] The losses suffered by the tribes are not known, but were no doubt considerable. By 1765, all tribes had succumbed and an uneasy peace descended upon the frontier. A deep and violent hostility remained on both sides. Settlers and military alike took revenge against many Indians and the few whites, most notably the Quakers, who had espoused the Indians' cause.

In the summer of 1760, an English trader named Williamson paid an Illinois Indian of the Kaskashia tribe to murder Pontiac; Pontiac was unceremoniously dispatched with a knife. Vengeance for the leader's murder was exacted by his followers upon whole tribes, particularly the Illinois.[11]

Within a few decades the Indian nations in Canada sank slowly into obscurity, becoming little more in the eyes of the British than nuisances or burdens to be shunted to the side. Two documents illustrate the change in status of the Indians of the central woodland once their services were no longer required, and their people rendered powerless. In the Proclamation of 1763, future arrangements for the Indians of the British colony consumed one third of the total document. The colony of Canada, divided into Upper and Lower Canadas in 1791, was re-created in 1840. In the Act unifying the two Canadas, the regular annuities to Indian allies of the British were not included, an apparent oversight. This negligence was not discovered and corrected until four years later.[12]

In recognition of their services to the British Crown, Indian nations who had been allies were promised gifts in addition to annuities. From 1845, these presents were reduced dramatically and in time dispensed with. The Legislative Assembly of Canada disagreed with this course and petitioned the crown in 1846 to:

> "interpose and prevent the discontinuance of presents to the Aborigines of British North America and their descendants ... On enquiry and examination of the subject, it seems to us that a pledge was given and renewed from the remotest period of British Supremacy in North America, on which the Indians have relied in advancing their past

> claims, and that these presents contribute most especially to their comfort, and even necessary support."[13]

This was but one of the Crown's promises that proved to be short-lived.

The Indians of the Canadas lost much of their land during the era, and were confined to reserves. Indian territory was acquired by the British under questionable circumstances. An 1838 committee of inquiry into the state of the aborigines of British North America stated in a letter to Earl of Durham, High Commissioner of Her Majesty's Provinces in North America:

> "The Committee beg to submit to your lordship's recollection that the whole of those vast tracts which now constitute our rich and valuable North American possessions, were once the undisputed property of free and independent tribes of Indians. A large portion of that territory has been absolutely taken from them, and the remainder has been acquired by purchase or concession on terms of more than questionable character."[14]

In many cases land was surrendered after threats that if the territory was not given up voluntarily, it would be seized by force.

There is little question that many, if not all, tribes of the central region were fully aware of the Proclamation of 1763, and that it had been systematically violated by its authors. A report issued in 1844 concerning reserves in Canada "found that the Indian regarded the Proclamation of 1763 as an Indian charter of rights, and referred to it several times in their representations to the government."[15]

The tribes soon learned that white law was to be used for purposes other than to defend Indian rights. The central tribes were brought under white control through military might, and subjugated through the force of law. Indian land was occupied, being viewed as the spoils of war by the British. Even the tribes who had joined forces with the English victors or who had remained neutral were soon aware that all tribes had been defeated.

Treaties of peace forced on those involved in the Pontiac rebellion presented an opportunity for the English to raise the issue of jurisdiction for British courts and laws. In the treaty negotiated by Sir William Johnson with the Seneca on April 3, 1764, the following provision was assented to which seriously eroded the legal autonomy of an Iroquois nation:

> "That should any Indian commit murder or rob any of his Majesty's subjects, he shall be immediately given up to be tried and punished according to the equitable laws of England, and should any white man be guilty of the like crimes towards the Indians he shall be immediately tried and punished - and the Senecas are never for the future to procure themselves satisfaction otherwise than as before mentioned, but to lay all

> matters of complaint before Sir William Johnson, His Majesty's Superintendent of Indian Affairs for the time being and strictly to maintain, and abide by the covenant chain of Friendship."[16]

There is considerable evidence suggesting that the phrase "his Majesty's subjects" was interpreted differently by the two signing parties. Whereas this term was seen by the English as including all crimes between Indians as well as white people living on British colonial soil, the Seneca viewed themselves as having agreed to British justice only when a white man was offended by an Indian, or in the opposite circumstances. Even Sir Johnson was aware of this distinction in interpretation as much as a year before the treaty in question was negotiated.

> "I know that many mistakes arise here from erroneous accounts formerly made of Indians; they have been represented as calling themselves subjects, although the very word would have startled them had it been ever pronounced by any Interpreter. They desire to be considered as allies and Friends ..." (from a letter to the Lords of Trade, September 24, 1763).[17]

This question about whether the Iroquois were British subjects or a separate nation was far from resolved, and would surface many times in the years to follow.

From the earliest contact between the English and the aboriginal people of this continent, the English made it clear that any attack against an Englishman would by prosecuted in English courts. During the first decades of the British Colonial era, this rule remained in force.

To administer justice in inter-racial crime, the obvious agents were those administering Indian affairs locally. In 1775, Governor Carleton received royal instructions concerning the future management of Indian Affairs, including the administration of justice in Indian territories. The Indian Agents, or Superintendents, and Commissaries at each post, were empowered to act as Justices of the Peace in their own districts and departments:

> "... with all powers and privileges vested in such Officers in any of the Colonies; and also full power of Committing Offenders in Capital Cases, in order that such Offenders may be prosecuted for the same; and that, for deciding all civil actions, the Commissaries be empowered to try and determine in a Summary way all such Actions, as well between the Indians and Traders, as between one Trader and another, to the Amount of Ten Pounds Sterling, with the Liberty of Appeal to the Chief Agent or Superintendent, or his Deputy, who shall be empowered upon such appeal to give Judgement thereupon; which Judgement shall be final, and process issue upon it, in like manner as on the Judgement of any Court of Common Pleas established in any of the Colonies."[18]

Indian evidence was deemed allowable under "proper Regulations and Restrictions."

Furthermore, each tribal settlement in the Southern District was to designate a man to be approved by the Indian agent "to take care of the Mutual Interests of both Indian and Traders in such Town." These elected officials were to, in turn, select a chief of the whole tribe:

> "who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally Attend upon the said Agent or Superintendent, or before the Commissaries; and to give his Opinion upon all Matters under Consideration at such Meetings or Hearings."[19]

These instructions marked the opening chords of the marriage between Indian Affairs and the administration of justice for Indian people; this practice allowed for prejudices and preferences of local government officials to be exercised in a court of law.

The Indian Affairs judicial set-up was not the only legal process under which an Indian met with partial justice. From the time British North America was exclusively established until the Act of Union of the Canadas in 1840, administration of justice in the colony was chaotic.

In Lower Canada, now referred to as Québec, a solicitor general ostensibly supervised judicial districts. Each area possessed sheriffs and justices of the peace; these justices had the unusual additional function of filling the political vacuum in the absence of local government.[20]

Upper Canada, the English strong-hold, had more adequate court facilities and a greater number of sheriffs and clerks of Crown pleas, but these officers operated in isolation from each other. Furthermore, these public servants, unlike today, were eligible to hold a seat in the legislature — and often did. Thus, "the dispensation of justice was attended by unsavoury political favouritism that did not lend prestige to the system."[21] The administration of justice from the years 1763 to 1840, was subject to, if not directly representative of, non-Indian political interests of the day.

A particular incident aroused considerable imperial discussion as to the jurisdiction of English courts over offences committed by one Indian against another Indian in the Canadas. Up to this point, the question of extended jurisdiction was left to the individual justice of the peace to determine, there being no formal policy on the matter.

In the southern tip of Upper Canada, in Amherstburg, an Indian murdered another in front of several witnesses in August, 1822. He was tried in the next assizes, and sentenced to death by the British court. Execution was delayed pending formal discussions between the colony and the imperial Government and Crown in Britain. It was not until February 13, 1826 that a warrant permitting the execution of Shawanakiskie, the Ottawa Indian convicted of murder, was issued by the British Crown. The declaration read:

> "... Execution was respited by Our Lieutenant Governor of Our said Province, until our Pleasure should be known, on the ground of there being no precedent on Record in that Province of a similar Case, and of doubts whether the Indians were amenable by Law to Our Courts, for offences committed within Our Territory, against each other. -- And Whereas We thought fit to refer the Proceedings in the said Case to Our Advocate, Attorney and Solicitor General for their Opinion, who have Reported unto Us that the Conviction of said Shawanakiskie was proper; and that no valid Objection exists against the Jurisdiction of the Court before which the said Shawanakiskie was tried. Now We considering the Heinousness of the said Offence, Think it just that the said Sentence should be carried into full effect, and Our Will and Pleasure therefore is that Execution be done thereupon, unless in the case hereinafter next provided for But inasmuch as some circumstances unknown to Us may be Known to you Our Governor of Our Provinces of Upper and Lower Canada, or to you Our Lieutenant Governor of Our said Province of Upper Canada which may render it inexpedient to Execute the same, We are therefore graciously pleased to declare Our further Will and Pleasure, that if there shall appear to you or either of you to be good reason for not carrying the said Sentence into full effect, you do cause to be passed under the Great Seal of Our said Province of Upper Canada Our Most Gracious Pardon of the said Murder and Felony upon Condition that the said Shawanakiskie be Transported to New South Wales or Van Dieman's Land or some one or other of the Islands adjacent for and during the Term of his Natural Life, or be Imprisoned in some Prison in the said Province and there kept to hard Labour for the same Term, as to you or either of you shall seem most meet and agreeable to Justice. - And for so doing this shall be Your Warrant."[22]

This long-awaited warrant was in effect a Royal statement granting colonial authorities the formal power to judge and execute sentences with regard to offences between Indians. There was not an overnight adoption of this policy, but the warrant did establish a clear-cut mandate for the white colonial government to supersede the Indian justice systems, and impose its own.

The committee of 1838 investigating the state of aborigines noted that in Upper Canada Indians were restricted in their rights to give evidence and bring charges against another; any Indian wishing to exercise such rights was required to be a Christian.[23] The committee recommended that Indian "laws and usages should be carefully collected and observed in our courts."[24]

Some Indian nations vehemently held to their stance that they were separate and sovereign states, subject to no other nation's laws. The Six Nations were the most vocal advocates of this position. The Iroquois had ceded most of their ancestral territory, had fought and died for their English "brothers," and expected to be left in peace. When British intentions to impose their law became evident, the Iroquois confederacy repeatedly petitioned the colonial government; the sachems observed that the Belt of Law and treaties with the British had solemnly pledged that the Iroquois would retain their own laws and constitution.

Justice Macauley reflected in a report on April 22, 1839, the view held by many in the Canadian Government and judiciary:

> "As to the exercise of civilized rights, the Resident Tribes are peculiarly situated, being in point of fact naturalized or natural born subjects, and domiciled within the organized portions of the Province, it would be difficult to point out any tenable ground on which a claim to an exempt or distinctive character could be rested. The Six Nations have I believe asserted the highest pretensions to separate nationality - but - in the courts of justice they had been always held amenable to, and entitled to the protection of the Laws of the lands. Instances could be cited in which Indians in different parts of the Province have been arraigned criminally for homicides committed on white people and on each other -- and also for other indictable offences. An Indian of the Six Nations was tried and convicted before myself at a Lake Niagara assizes for stealing one or two blankets from a squaw on the Grand River Tract. The woman applied to a Justice of the Peace, who felt bound to act upon her complaint. Exemption was claimed by the prisoner's counsel, as being a matter only cognizable among the Indians themselves, according to their own usages and customs, but I had to refuse the plea, not being able to point out any legal authority by which the protection of the criminal law could be refused to the Indians inhabiting the County of Haldimand, whenever any of them sought it ..."[25]

When a British court tried an Indian accused of an offence against another, the Indian nations themselves did not always let matters end there. A tragic example involved Thayendanega, the famous Mohawk Chief known also as Joseph Brant. In the late 1700s, Brant accidentally killed his beloved son who was attacking the chief in a drunken rage, wielding a treacherous knife. In despair, he gave himself up to the British authorities. He was tried and acquitted, but remained in such a state of despondency that he gave up all his public duties and retired to grieve.

Ethel Brant Monture gives the following account of the reaction of the community leaders in her bibliography on Brant:

> "His People of the Longhouse stood beside him in his trouble; they held a council and deliberated on all the facts. Then they sent Joseph a letter, for he shut himself away from them: 'Brother, we have considered your case. We sympathize with you. You are bereaved of a beloved son. But that son raised his hand against the kindest of fathers. His death was caused by his own hand. With one voice we take away all blame from you. We tender you condolences. May the Great Spirit give you consolation and comfort under your affliction.' The kindness of the Council was the spur Joseph needed to bring him out of his despair."[26]

The British system of justice was solely designed to determine whether or not Joseph had committed an offence. The Iroquois approach to justice was intended to not only determine in their own minds that the action was devoid of malice but to help Thayendanega to feel blameless and comforted. The sachems wanted to ensure that the whole tragic affair was brought to the fair, and humane conclusion.

The British Colonial era in the central regions of Canada encompassed the last death throes of many Indian nations, the breaking of agreements and treaties by the English, as well as the gradual and methodical overpowering of traditional governments and Indian justice by the white authorities. The paramount concern of the British during this period was to place Indian nations on remote and valueless land so that the white nation could proceed with its commercial and political enterprises. They seized Indian land or brought it through corrupt practices and threats. Special Indian legislation legalized these activities on the part of the colonial authorities, and yet other white legislation and formal agreements were openly flouted by these same men.

English law could only be viewed by the central tribes as a vehicle for subjugation, a tool for completing the destruction or pacification of the Indian people of Canada. The tribes who revolted against the arbitrary exercise of British power and who raged against the unlawful seizure of their lands, were beaten down for trying to assert their traditional rights and natural justice.

British law was imposed against the will of the Indian chiefs and their people. The values, religions, power structures and languages of the Europeans were forced upon the original people through legislation and judicial process. And yet, the Indian was told that the white man had an equitable justice system that would protect his interests. To expect that these aboriginal peoples would ever view the English justice system with anything akin to respect is astonishing.

Endnotes

1. Francis Parkman, The Conspiracy of Pontiac and the Indian War After The Conquest of Canada (Toronto: The Museum Book Co., Tenth Edition, 1886), Volume I, p173.
2. Milo Quaife, Ed., John Long's Voyages and Travels in the Years 1768-1788 (Chicago: The Lakeside Press, 1922), p44.
3. Parkman, The Conspiracy of Pontiac, Volume II, p1.
4. ibid, Volume I, p272.
5. ibid, Volume II, p35.
6. ibid, p37.
7. ibid, p39.
8. ibid, p40.
9. ibid, p184.
10. ibid, p115.
11. ibid, p184.
12. J.E. Hodgetts, Pioneer Public Service, An Administrative History of the United Canadas, 1841-1867 (Toronto: University of Toronto Press, 1955), p205.
13. S. Stewart, History of Indian Department (Ottawa: Canadian Archives, RG10, Volume 3016, File 218, 410, pt.1).
14. The Sub-Committee appointed to make a comprehensive inquiry into the state of the aborigines of British North America, Report on the Indians of Upper Canada, 1839 (Toronto: Canadiana House, 1968), p23.
15. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ont.: Collier-Macmillan Canada, 1976), p113.
16. Claim of Six Nations Indians to be Recognized as a Separate Nation, 1900 (Ottawa: Canadian Archives, Matheson's Blue Book, RG10, Volume 10027), P261.

17. ibid, p260.

18. D.G. Smith, Canadian Indians & the Law: Selected Documents, 1663-1977 (Toronto: McClelland & Stewart, 1975), p8.

19. ibid.

20. Hodgetts, Pioneer Public Service, p13.

21. ibid, p14.

22. ibid, p24

23. The Sub-Committee, Report on the Indians of Upper Canada, 1839, p39.

24. ibid, p40.

25. Claim of Six Nations Indians, p271.

26. K. Gooderham, Ed. I Am An Indian (Toronto: J.M. Dent & Sons, 1969), p154.

Traditional Justice of the Plains and Northern Athabaskan Indians

The vast expanse of the Prairies was almost impenetrable when Indian tribes travelled by foot. The introduction of the horse opened the plains to Indian migration, hunting and settlement, as they pursued the buffalo into the interior.

The Cree, Blackfoot, Assiniboine, Sarcee, Gros-Ventre and Sioux swept into the plains, pushing other tribes over the mountains and into the Mackenzie basin.

The Sakani, Beaver, Chipewyan, Slave, Nahane, Dogrib, Yellowknife, Hare, Kutchin, and southern Tutchone tribes struggled to survive as hunters in the cruel environment of the northland fed by the Mackenzie and Yukon rivers. In the following pages, the common law of the plains nations, and the northern Athabaskan peoples will be highlighted.

Blackfoot Traditional Justice

The Blackfoot Dog Days, the era before the horse arrived in North America, remain shrouded in mystery. Legend holds that the Blackfoot bands may have originated in the deep south of this continent, supporting evidence being found in some ancient Blackfoot words.[1] Quite probably this nation spent the latter part of their Dog Days in the northern woodlands around Lesser Slave Lake, between the Peace and Saskatchewan Rivers.[2]

The introduction of the horse revolutionized their culture and social structures. Suddenly enabled to cover vast distances in pursuit of the huge buffalo herds, the Blackfoot adopted the life of nomadic plains hunters. It is the era after the introduction of the horse that is recorded in books and the minds of the people; the description that follows, then, is centred on the horse days, and plains existence.

The Blackfoot nation was in fact a confederacy of three tribes, related by blood and tradition; the Siksika or Dark-footed people in the north, the Kainai or Blood in the central region, and the Pikuni or Peigan in the southerly portion of their joint territory in the Prairies.

These tribes were sub-divided into clans, each governed by an elected chief. From among themselves, the clan chiefs selected a head chief for their tribe.[4] According to beliefs, all men were created equal, with no special rights accorded by birth. Only by displaying courage, generosity, and kind-heartedness could a man hope to become a leader of his people.

Cutting across the clans were "I-kun-uh'-kah-tsi" or All Comrades societies; membership was based on age and ability to purchase a seat. The important leaders of these societies exercised considerable influence on the affairs of their clans. Although the All Comrades were under the authority of the chiefs, the chief's power was dependent upon the cooperation of the societies. Society leaders carried a strong voice in the deliberations of the tribal councils composed of all the clan chiefs.[5]

The All Comrades societies had several duties. "The more general functions of the societies were primarily to preserve order in all circumstances and to punish offenders against the public welfare whenever necessary. They protected the camp by guarding against possible surprise by an enemy."[6] Buffalo scouting and the hosting of ceremonies were additional responsibilities.

The scattered clans joined in one large camp in the summer to hunt buffalo. It was during these gatherings that the need for laws and enforcement arose. The tribal council selected members of the All Comrades societies to act as police for the upcoming summer hunt and, where necessary, during the winter isolation. The one year term could be, and often was, extended.

The "term police" were vividly aware of the requirement of being perceived as fair by their fellow citizens while enforcing community rules. The police of one year might be ordinary citizens the next, and subject to the kind of treatment others received from them. It was considered a great honor for the societies to be selected as camp police; those chosen were allowed privileges, and received considerable respect from the community at large.

The rotating system of policing had another advantage in addition to encouraging fair enforcement. Short appointments allowed for a tremendous flexibility in the type of policing available. Each society was noted for a particular characteristic which uniquely suited it to deal with specific conditions within the tribe. Some, such as the Black Soldiers and the Soldiers, were known for their severe punishment of unacceptable actions.[7]

If there was increased disrespect for the rules, a society with a reputation for strict enforcement could be selected as camp police. When the "crime wave" receded, a different type of society could be chosen, one known for its gentle approach to policing in which unacceptable behaviour was influenced by the impeccable example of the police themselves.

The general laws for the Blackfoot were few in number, and serious in consequence; only actions which threatened the group's survival were considered crimes. During the few weeks of the buffalo hunt, the year's supply of bison had to be secured. The clan's survival depended on an organized and disciplined encampment and hunt.

The duty of ensuring organization and discipline fell to the camp police. When the herd drew near, no one was to leave camp; if one person selfishly stampeded the buffalo in pursuit of his own ends, all would starve. A person violating this law was likely to have his clothing and tipi cut up by the police.[8] The same fate awaited someone who left the camp despite an order to remain; stragglers were often in danger from a lurking enemy.[9] There were a few warriors who by virtue of their unusual and brave deeds could claim exemption from punishment for violating these camp laws.[10]

There were a number of laws in force throughout the year. Murder was considered a serious offence. It was settled by the taking of a life, either the murderer's or a member of his family, or by compensation. Compensation left the offender stripped of all possessions.[11] A third party usually performed the necessary negotiations in order to bring about an accommodation.[12] Compensation could be accepted by the victim's family for a murder committed within or outside the tribe. Death in battle or murder by an enemy required satisfaction in blood or payment; the souls of the departed were believed to roam in misery, finding rest only when satisfaction had been gained.[13] Accidental death also required some form of compensation.

Adultery by a woman was often punished severely; if the violation of the marriage was the first, a wife might have been lucky to escape with the loss of an ear or nose at the hands of her husband. A second act of infidelity was usually punished by death; quite often it was the All Comrades who took her life, or the woman's relatives upon hearing complaints from the husband.[14] A husband was allowed to beat or kill his wife, with some recognized cause, as he in effect owned her.[15]

Theft of most kinds of goods simply required the return of the article. However, a man who through laziness had not planted tobacco and stole some from his neighbours committed a sin of grievous importance. Tobacco was a sacred substance given to man by his creator. No worldly force was felt to be needed to punish the offender. It was believed that a lizard would appear to the thief in a dream, after which he would fall sick and die. In the event that a tobacco thief did become ill, the community made no effort to help him.[16]

A person who had committed treason by aiding an enemy was put to death on sight. A man who showed cowardice, who would not fight an enemy, was required to wear a woman's dress and forbidden to marry.[17]

All Comrade societies possessed rigid codes of behaviour for their membership. Violation usually led to some kind of public chastisement. The offender's clothes often were destroyed in these public shamings, and on occasion, beatings were inflicted for serious violations. There is evidence to suggest that punishments often appeared to be more severe than they in effect were. These displays constituted a warning to would-be offenders that violations of the society's code or the laws of the community would be quickly and publicly punished.

A religious figure, appointed by the chiefs and their advisers, wielded considerable power in the tribes of the Blackfoot. Every four years, a man was selected to be responsible for the sacred items of the nation's religion. All spiritual ceremonies and meetings were held in the lodge provided this prominent person. As a neutral and spiritual figure in the community, this man was often called upon to pass his judgement upon disputes. "His presence and voice are sufficient to quell all domestic disturbance, and altogether he holds more actual power and influence than even the civil and war chiefs."[18]

The Blackfoot justice system was in tune with their lifestyle and plains environment. The summer buffalo hunts brought hundreds and even thousands together in a vibrant camp. Swift and public enforcement of a limited and widely known set of rules was necessary. The laws of the camp were rigid, but enforcement was flexible. Power in the community was balanced to prevent abuse by any one group of traditional justice authorities (except for men versus women). As the bands scattered in the fall, the system of justice established during the summer hunt was easily transferable to the small winter settlements.

The rules of the community were well established and most were linked in an obvious way to the welfare of the whole group. Enforcement proves easier under such circumstances.

Endnotes

1. Interview, Victoria Santana

2. G.B. Grinnell, Blackfoot Lodge Tales: The Story of a Prairie People (London: David Nutt, 1893), p177.

3. Interview, V. Santana.

4. Grinnell, Blackfoot Lodge Tales, p219.

5. T.E. Mails, Dog Soldiers, Bear Men & Buffalo Women (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p85.

6. ibid.

7. Edward S. Curtis, The North American Indian (New York: Johnson Reprint Corp., 1970), 18, p189-90.

8. ibid.

9. Mails, Dog Soldiers, p118.

10. Curtis, The North American Indian

11. Grinnell, Blackfoot Lodge Tales, p219.

12. J. McLean, Canadian Savage Folk: The Native Tribes of Canada (Toronto: William Briggs, 1896), p61.

13. ibid, p60.

14. Grinnell, Blackfoot Lodge Tales, p220.

15. Diamond Jenness, The Indians of Canada (sixth edition, Ottawa: Information Canada, 1963), p319

    and

    Grinnell, Blackfoot Lodge Tales, p217.

16. Grinnell, Blackfoot Lodge Tales, p271.

17. ibid, p220.

18. W.W. Warren, History of the Ojibway Nation (Minnesota: Ross & Haines, 1957)

Traditional Justice of the Cree

The Cree inhabited the region southwest of Hudson Bay prior to the arrival of Europeans. With the introduction of the British fur trade and firearms for barter, the Cree expanded westward; they gained control of northern Manitoba and a sizable portion of what became known as northern Saskatchewan and Alberta, and reached as far as the Mackenzie Delta and Rocky Mountains.

The Cree became divided into two types of societies, which came to be known as the Plains' Cree, and the Woodland or Swampy Cree.

Almost all recorded information available regarding the Cree is based upon the era after initial contact, the era of Cree expansion. Those who migrated onto the Prairies underwent changes in their society; this evolution occurred more as a result of the plains' environment and contact with the tribes residing there, than as a result of white contact. With this caution in mind, we can now briefly glimpse the Cree culture and style of justice.

The Cree, or Kristinaux as the French called them, were scattered in roving bands, and governed loosely by a chief and councillors. The chiefs among the Plains Cree appear to have had greater influence over their band's affairs than their counter-parts in the woodlands of the north.[1] In both cases, a man became chief through his personal attributes, such as his ability as a warrior, hunter, and his renown as a generous and courageous person. A chief would often name a successor before death.

Duties of a chief included determining when it was necessary to move camp, and charting the migration.[2] The chief had the responsibility of restoring harmony between two or more quarrelling parties, even if he had to contribute his own property to this end. A person accepting the office of chief had to forego his own rights to retaliate against another when offended.[3]

There were two fundamental laws for the Plains Cree that were similar to other plains' societies. "The first, that no family should separate itself from the band without permission; the second, that no individual should begin a buffalo chase until all the hunters were ready."[4] These basic rules for the survival of the group were enforced by the community.

The hunt laws were enforced during the communal summer encampment, when scattered bands converged to hunt and engage in ceremonies close to the hearts of the Cree. Individual hunting, common in winter, was strictly forbidden in the summer. The hunting laws and the general preservation of the camp's peace were upheld by warrior or soldier societies. These organizations were composed of influential men, recognized for their bravery and hunting ability. In addition to their policing role, members of these societies convened and led the ceremonial dances, and were the frontline in battle.

Violation of the summer encampment laws was usually penalized with the destruction of the offender's property. Punishment was exacted regardless of whether an offender intended to commit the act.[5]

"When the law-breaker submitted and showed by his behaviour afterwards that he was repentant, a time would come when the Warriors would assemble again, and from their own possessions make up the equivalent of what had been destroyed, or give even more to the man whom they had first punished."[6]

Forgiveness and acceptance back into the community usually occurred within a few days.

Other actions which brought sanctions, either by the offended party or the community at large. Retaliation for a murder of a relative was accepted, if not expected, and took the form of execution. A woman suspected of adultery without her husband's permission could have been beaten, or have lost her hair, nose or her life. The husband was free to punish his wife without interference.[7]

Cannibalism was resorted to in the last throes of starvation. An eater of human flesh was treated with such abhorrence that the mere sight of the unfortunate individual caused his neighbours to flee from him.[8] This ostracism may have been related to a fear of the Windigos, people who have turned into cannibals in a bewitched state. Any convincing evidence that a person had eaten human flesh unnecessarily generally led to the death of the cannibal.[9]

Accidental death required some form of compensation. Often this took the form of adoption of the perpetrator into the victim's family to replace the one inadvertently killed.[10]

Taking a life was permitted under certain circumstances. In situations of near-starvation, elderly people who were unable to keep up with the travelling family would at times be left behind, or the elder, feeling himself a burden, would ask to be killed.[11]

Insane persons were slain on occasion, most probably when they became an obvious danger. Women whose life in old times was akin to that of a slave were known to kill their female children and fetuses, to save their offspring from a life of pain and hardship.[12]

Theft among the Cree was rare, as by definition the taking of an article was only considered stealing if it was not needed by the thief.[13]

A sacred symbol commanding absolute respect was the pipe. The pipe symbolized the things that the Great Spirit had created. The stone of the pipe represented the mountains; a man was to be like a rock, having complete control over his own body and actions. The wooden stem reminded humanity of the forests filled with trees of all colors and shapes. The sweet grass purified the pipe and the body, and was burned in the stone bowl. The

Great Spirit blessed man with animals who were able to demonstrate many important lessons. The symbol of all living things was the fire in the pipe.[14]

The band's pipe was kept by one person; this honour required the Keeper to intervene between two citizens engaged in a dispute; when displayed, the pipe commanded such respect that the combatants stopped their fight immediately; there could be no violence or dissension in the presence of the symbol representing all that the Great Spirit had given the Cree.[15] An agreement solemnized by the smoking of the sacred pipe was rarely, if ever, broken.

The individual in Cree society was taught from birth by his or her elders that all citizens were expected to possess formidable self control. Each person was supposed to mind his own business. Interference in the affairs of another only occurred when an action seriously threatened the group's survival. Enforcement of these few basic rules was designed to merely stop the behaviour rather than punish the transgressor or obtain revenge. If an offender mended his ways, he was often restored to his former position and all destroyed possessions were replaced.

Acceptance back into the band as a full member in good standing was publicly marked by a ceremony and dance. The primary object of laws was protection of life and continued existence of the Cree nation.

Endnotes

1. David G. Mandlebaum, The World of the Plains Cree (Saskatchewan: University of Saskatchewan Press, 1967), p9; and

   Edward Curtis, The North American Indian (New York: Johnson Reprint Corp., 1979), Volume 18, p69.

2. Curtis, The North American Indian, Volume 18, p69.

3. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ont.: Collier-Macmillan Canada, 1976), p94.

4. Edward Ahenakew, Voices of the Plains Cree (Toronto: McClelland & Stewart, 1973), p146.

5. Mandlebaum, The World of, p9.

6. Ahenakew, Voices, p147.

7. Alexander Mackenzie, Voyages from Montreal through the Continent of North America, to the Frozen and Pacific Oceans in 1789 and 1794 (New York: Albertan Book Co., 1922), Volume I, p cxlvi.

8. J. McLean, Canadian Savage Folk: The Native Tribes of Canada (Toronto: Coles Publishing Co., 1971), p77.

9. ibid, p83.

10. J. McLean, The Indians: Their Manners and Customs (Toronto: Coles Publishing Co., 1970), p64.

11. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 6th Edition, 1963), p286.

12. Mackenzie, Voyages from Montreal, Volume I, p cxlviii.

13. ibid, p cli.

14. an elder from Alberta.

15. Mandlebaum, The World of the Plains Cree, p9.

Overview of Traditional Justice Among the Plains Indians

Justice among the Blackfoot and the Cree was typical of the Indian nations who moved into the once-forbidding Prairies upon the arrival of the horse. The migration of these tribes into the plains in search of the seemingly–endless buffalo herds caused an adaptation in their life-styles and cultures. A considerable commonality emerged among the Prairie peoples.

All plains tribes possessed warrior or hunter societies which had the responsibility of policing the camp and enforcing the few essential rules of the summer hunt. The Blackfoot had a complex system of rotating police, while the Cree had more permanent enforcers. Laws and enforcement concentrated on preserving the peace and ensuring an adequate supply of buffalo to maintain the tribes until the next camp.

The Gros Ventre in the territory now called southern Saskatchewan adopted a soldier society responsible for upholding the summer's peace. "Those who had been members during the previous year and who wished to join again met together with new volunteers, and elected four leaders. The group served the civil chiefs and had the usual power to punish offences against the public welfare."[1]

The Sarcees of the Athabaskan linguistic family used six fraternities to perform religious, social, military and police functions. Four of the societies policed the camps, while one was expected never to retreat in battle while a Sarcee was in danger.[2]

The Sioux or Dakota of Manitoba had rotating police forces. Almost half the young men of the nation were organized in societies known for their strictness in enforcing the nation's laws. "The police in each village had two leaders called Soldier chiefs, through whom all commands of the camp or civil chiefs were transmitted to the other members of whichever societies were on police duty."[3] The leaders selected the members of the soldier associations, those so honoured "having had a successful vision quest and counted at least one undisputed coup."[4] Counting coup was an action in which a warrior touched an enemy with something in his hand; killing an enemy did not bring the prestige that counting coup brought, nor was the death of the enemy considered necessary to have considered the act of counting coup completed.[5]

The Assiniboin, who migrated into what is now called southern Manitoba, were greatly influenced by their soldier societies. These fraternities were comprised of warriors acknowledged as being the most brave, reckless and skilful; these men had to be unmarried and were usually between 25 and 35 years old. A departing head of a warrior society selected his successor from the remaining members. All other positions were filled by unanimous agreement of all members of the organization.[6] "The society policed the camp and regulated the buffalo hunt, received delegations from other tribes, and authorized raids for scalps and horses."[7] When a dispute erupted in the camps, these soldiers had the duty of restoring peace. Anyone interfering in this process could be beaten, or even killed. Any punishment meted out by the societies was accepted quietly by an offender as his due.[8]

As these tribes were scattered across the Prairies in the winter, disputes between and within families were generally left to natural justice. Strong moral codes were instilled in the young by their elders and passed on through the generations. Those who violated their nation's code of ethics were ostracized or cast out from their village, and might well have perished in spirit if not in flesh. These tightly-knit tribes had little need to interfere with their brethren, as only through impeccable behaviour could an individual hope to obtain any high standing or respect in his community.

Endnotes

1. Thomas Mails, Dog Soldiers, Bear Men & Buffalo Women (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p233.
2. Edward Curtis, The North American Indian (New York: Johnson Reprint Corp., 1970), Volume 18, p159.
3. Mails, Dog Soldiers, p228.
4. ibid, p239.
5. Dan Kennedy (Ochankugahe), Recollections of an Assiniboine Chief (Toronto: McClelland and Stewart, 1972), p78.
6. Mails, Dog Soldiers, p341.
7. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 6th Edition, 1963), p314.
8. Kennedy, Recollections, p15.

Northern Athabaskan Traditional Justice

The Indian inhabitants of the vast expanses in the northerly climes of the Mackenzie River and Yukon River basins spoke dialects of the Athabaskan tongue. All were hunters of woodland and bush areas, and bore similar life styles and cultures.[1]

The Sakani, Beaver, Chipewyan, Yellowknife, Slave, Dogrib, Hare, Nahane and Kutchin tribes were divided into independent bands. Leaders were chosen due to their renown as hunters and men of intelligence. In general, "the power of decision was vested in the total membership of the group or band, and unanimous consent was required before action was taken; the chief was but a spokesman for his fellows."[2] Each family was governed by its head male and functioned as an autonomous group.

For example, Chipewyan groups of varying size followed the trail of the caribou. These bands were led by a selected chief whose authority was minimal. The strong dominated the weak, as was the case with their animal brothers. Nevertheless, certain principles governed the lives of the Chipewyan, rules which were aimed at benefitting the whole community. The life of a hunter being precious in this harsh climate, quarrels of even the most ferocious nature rarely went beyond wrestling and name-calling.[3]

Murder was rare in Chipewyan society, violence being restrained by common principles of behaviour. However, when such extreme incidents did occur, the murderer was shunned and treated as an object of loathing, even by his own family. Despite the degree of depression and loneliness the offender experienced, he still received this treatment. When he crossed the path of a neighbour, he would be chastised with such phrases as "there goes the murderer"[4]

Murder was not a deplorable crime when it involved a wife, or wives. In Chipewyan society the man of the family was indeed its master. He could treat his wife (or wives) in such a cruel fashion as to cause her death, and not be treated any the worse by his comrades.[5]

The Chipewyan, unlike most Slave bands, were known to have abandoned elderly and infirm in times of destitution.[6]

Daily life was considerably affected by taboos among the Chipewyan. Violation of taboo was believed to bring illness and death to the violator, and, at times, catastrophe on the band. Dreams were the main source of personal taboos, which most individuals strictly upheld. There were common prohibitions as well; if an injured animal was left to die a slow painful death, the person who caused this to happen was reported to have been visited by a lingering illness. The shaman was often sought to alleviate such distress.[7]

Women who were menstruating had to follow a formidable number of rules. They were forbidden to "walk on ice of rivers or lakes, or near the part where the men are hunting beaver, or where a fishing net is set, for fear of averting their success. They are also prohibited at those times from partaking of the head of any animal, and even from walking in, or crossing the track where the head of a deer, moose, beaver, and many other animals, have lately been carried, either on a sledge or on the back. To be guilty of a violation of this custom is considered as of the greatest importance."[8]

The Slave had no chief in times of peace; disputes were settled by informal councils of the hunters in a particular locale if an offer of compensation to the victim was of no avail. The Slave differed from the Chipewyan in their treatment of women, showing great kindness and aiding them in the heavy work. The Dogrib and Hare led similar lives to the Slave. However, the Hare and Kutchin, like the Chipewyan, were known to kill their aged and female infants in periods of hardship.[9]

The Kutchin, who were fishermen in the summer and hunters during the winter, were unusual among the northern Athabaskan tribes. They appear to have adopted some of the structures of the west coast Indians, being just north of these complex nations. The Kutchin were composed of three distinct divisions or "phratries" where marriage within a division was forbidden. The chiefs of these phratries were chosen, not through rank or heredity as on the coast, but for their courage and wisdom.

These chiefs possessed little formal authority. In fact they were often subject to the solemn influence of the shaman, each band possessing one or two.[10]

Lying was almost inconceivable to the northern Athabaskan peoples, and those who lied were ostracized. Alexander Mackenzie recorded in the late 1700s that only two women and one man of the Beaver had been known to lie and they were "considered as objects of disregard and reprobation."[11] These tribes were also noted for their respect for each other's property.[12]

In general only a few individuals had any authority outside their own families in these northerly societies. The family itself had the power of life and death over its members, particularly the old, infirm and female infants when necessity dictated such harsh actions. The life of the hunter was precious and was protected at all costs to ensure continued existence of the band; the lives of others were occasionally forfeited to ensure the survival of the providers.

There were few rules for the group, and many for the individual. No earthly intervention was needed to enforce these taboos; they were created and administered by other forces. The laws for the community were only enforced within certain limits. Revenge or punishment was not to exceed wrestling, even for murder. However, as many of these tribes valued the art of wrestling highly, defeat was a shameful and humiliating lesson. Ostracism was also widely practised by the northern Indians, and was an effective tool in controlling undesirable behaviour; in these isolated pockets of habitation, such

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treatment quickly became almost unbearable for an offender. The offender, however, was able to continue providing for his family; the form of justice adopted by the northern Athabaskan tribes did not bring added hardship to the tribe by removing another hunter through death or confinement.

Endnotes

1. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 6th Edition, 1963), p377.

2. René Fumoleau, OMI, As Long As This Land Shall Last (Toronto: McClelland and Stewart, 1973), p151.

3. Alexander Mackenzie, Voyages from Montreal through the Continent of North America, to the Frozen and Pacific Oceans in 1789 and 1793 (New York: Albertan Book Co., 1922), Volume I, p cixxxiii.

4. Samuel Hearne, A Journey from Prince of Wales' Fort in Hudson's Bay to the Northern Ocean, 1769-1772 (Toronto: The MacMillan Co. of Canada, 1958), p70.

5. ibid.

6. Jenness, The Indians of Canada, p386.

7. Edward Curtis, The North American Indian (New York: Johnson Reprint Corp., 1970), Volume 18, p46.

8. Hearne, A Journey, p202-3.

9. Jenness, The Indians of Canada, p391 and 395.

10. Geographic Board of Canada, Handbook of Indians of Canada (Ottawa: C.H. Parmalee, 1912, reprinted by Coles Publishing Co., 1974), p255.

11. Mackenzie, Voyages, p25.

12. Fumoleau, As Long As, p380.

Contact Between Prairie Indians and White Men

White men and the tribes of the plains were made contact between 1690 and the late 1700s. Relations between the two were primarily economic, the first Europeans being almost exclusively traders and explorers. The struggle among Europeans for control of the plains occurred between trading companies, rather than armies.

The Hudson's Bay Company was created in 1670. This group of businessmen became "the full and absolute lords and proprietors" of the land surrounding all rivers draining into Hudson Bay, known as Rupert's Land.[1] The company was granted the vast territory by the British Crown along with exclusive political jurisdiction and a trade monopoly. The Company was also empowered to strike laws and enforce them in accordance with British law.

The early trade alliance of the Company with the Cree near Hudson Bay brought dramatic changes to the plains and northern inhabitants. The Cree, acting as middlemen in the fur trade, migrated from their northern woodland retreat across the plains as far as the Rocky Mountains. The expansion of the armed Cree created a domino effect, pushing Indian nations from their territories.

The Chipewyan, for example, migrated north, and the Carrier and Kutenai were forced into the Rockies. These migrations led to increased intertribal warfare. The Cree and Blackfoot were initially on friendly terms, bartering with each other. With increased competition for the European goods that eased the harshness of life, relations between these two powerful nations deteriorated into open conflict.

Disruption of tribal territory, and intertribal warfare were but the beginning of the devastation emanating from the fur trade. Alcohol was the mainstay of the trade; Indian hunters were provided with considerable quantities of adulterated alcohol (well named as fire water), which many of the traders themselves were unable to consume due to its potency and poisonous nature. The procedure of purposely encouraging the Indian hunters into a state of helpless intoxication allowed the fur traders to make enormous profits.[2] The Indians were often told that it would be many months, perhaps even years, before the tribes would have access to liquor again, thus encouraging over-indulgence. In addition, the traders' own inclination to "binge" drinking was often the only example of alcohol consumption available to the plains Indians. The Indian hunter and his family would frequently become inebriated to the point where the trader soon possessed all that they owned, even their clothing and food; all sold for another drink of whisky.

The introduction of alcohol also disrupted the traditional life-style and values of plains Indians societies. Old codes of behaviour were often undermined as irrational acts and frequent bouts of violence became everyday occurrences in the settlements and camps. It was difficult for the plains chiefs, as it was for those farther east, to hold those behaving in such an unaccustomed manner responsible for their actions. However, some chiefs managed to protect or liberate their people from the horrors of alcohol indulgence through the exercise of traditional laws and the lesson of honourable example.[3]

With the tide of the fur trade and its new ideas of competition, capitalism, and individualism, the power of the chiefs and elders suffered along with the traditions of the people of the plains. It became possible to gain wealth and influence by looking out for one's personal interests. as the explorers and trainers acquired influence over the tribes, disrespect enveloped the old ways.[4]

The traders and explorers carried another form of destruction to the plains: disease. An epidemic in 1781 caused the death of an estimated 90 percent of the Chipewyans, and hundreds of Cree.[5] The Cree nation's power was further shattered through a series of smallpox and tuberculosis epidemics. The greatness of the Assiniboine and their powerful chief Tchatka declined quickly when smallpox swept the nation in 1838; 1,200 warriors died at Fort Union alone that year.[6] The Blackfoot were devastated by smallpox and measles throughout the 1800s, when whole families and societies perished.[7] Plains Indian societies staggered under this blow.

But the tribes did not succumb. During these times of upheaval and ruin, the warrior societies of the Prairie Indians became more influential. These

> "turbulent days demanded the severe curtailment of any individual conduct that might tend to jeopardize the camp or tribe. It was important to keep tempers under control, and as the days became more difficult under White pressures, a kind of rare sharing of the hardships became the only answer to the survival of some. The people understood this, and painful as it may have been at times, they knew that the society police performed their thankless duties for the good and longevity of them all."

The requirement of exemplary conduct stood these organizations and the people that they served in good stead. It was through the untiring efforts of a number of chiefs and soldier societies that some bands survived, or, expired with dignity. If paid heed, the wisdom of past generations provided strength in these traumatic and deadly times.

No law, Indian or white, controlled the fur traders who bartered death. Some traders took Indian property and lives through treachery and outright violence. A group of independent whisky traders in the west formed an organization for furthering their enterprises. This group passed laws regulating and protecting their trade, and enforced their "legislation" through a contingent formed of their employees and referred to as the Spitzi Cavalry. "There were many rough scenes of rioting, debauchery, and killing of Indians witnessed at these places. The life of an Indian was of little worth to some of these men ..."[9]

The tribes seethed under this open abuse and barbarity. Bold resolution seized the hearts of some as lone whisky traders were shot on sight. However, raging epidemics laid to rest any Indian plans of ridding the plains of these callous independent traders.

The only white settlement of the day was established in 1811 in the District of Assiniboine (later to be a part of Manitoba) under the monopoly of the Hudson's Bay Company. Legislation was eventually passed in the District in an attempt to restrict or prevent the use of alcohol in the fur trade. In 1836, the Council of Assiniboine prohibited the sale of liquor to Indians, fining an offender 20 shillings for every infringement.

Difficulties in securing information and enforcement made the conviction rate low. Late in the winter the Council decided to accept Indian evidence in court as valid, as well as to provide one half of the fine to the person who provided the information.[10]

Penalties were increased in 1841 and 1845. On June 19, 1845, the Council of the Assiniboine passed the following resolution:

> "Whereas the Indians, though less guilty than their seducers, are yet not wholly innocent, it is resolved that, if any Indian be inebriated, or commit, or threaten to commit, any unprovoked violence, he shall either then or afterwards, be bound with two sureties to his good behaviour by any magistrate; and that in default of such security, he shall be kept in gaol, if he was not in liquor for a calendar month, or, if he was in liquor, till he prosecute the party guilty of furnishing the means of intoxication. Provided, however, that his unsupported testimony shall not be conclusive against any but convicted or reputed offenders."[11]

As late as 1851, the Governor of the colony was unsure whether English law applied to Indians. He stated that: "The Indian tribes do not stand on the same footing as British subjects".[12]

The lack of enforcement of English law outside the colony was apparently not based on policy or jurisdiction debates, but on the lack of an armed force to uphold the laws. Indeed, even though the Hudson's Bay Company had the right to pass and enforce laws in Rupert's Land, the area without administration with the exception of the small colony along the Red River.

During the period from contact to Confederation, the Indian societies of the plains underwent considerable change, and yet they remained in control of their own affairs. Disease, alcohol, and increased warfare reduced the nations to shadows of their former strength. The gun and horse radically altered Indian society. The horse increased mobility throughout the plains, and created greater cultural similarities through contacts and exchanges among tribes and bands. The soldier societies became more fundamental for group survival; their enforcement of traditional rules and their chief's directions provided the necessary support and solidarity for some settlements to withstand the new ruinous reality. The core values of society and the mechanisms for enforcing limits on behaviour often remained intact.

The Prairie still remained largely in the hands of its original owners. On paper, it was owned by the British Empire, but no actual control, even of a token nature, was exercised by the British apart from the Assiniboine colony.

This arrangement was not to last. Many tribes were spread out over the U.S. border, and natural migrations and trade ties were north/south. The fledgling United States had a growing interest in this region, if only to spite the British. A new, more subtle struggle for control by non-Indian nations would occur over the plains with amalgamation of British North America into the Confederation of Canada. The Indian tribes of the plains would soon lose their freedom not only physically, but culturally and politically; they would lose their right to self-government, and internal justice.

Endnotes

1. E.H. Oliver, The Canadian Northwest: Its Early Development and Legislative Records (Ottawa: Government Printing Bureau, 1914) Volume I, p144.

2. Joseph H. Kinsey, Strange Empire - The Story of Louis Riel (Toronto: Swan Publishing Co., 1965), p24-7;

   and

   Alexander Mackenzie, Voyages from Montreal through the Continent of North America, to the Frozen and Pacific Oceans in 1789 and 1793 (New York: Albertan Book Co., 1922), Volume I, p xxcii and xxxii.

3. J. McClean, Canadian Savage Folk: The Native Tribes of Canada (Toronto: Wilham Briggs, 1896; Reprinted by Coles Publishing Co., 1971), p227.

4. Alexander Henry and David Thompson, The Manuscript Journals of Alexander Henry and of David Thompson, 1799-1814 (Minnesota: Ross & Haines, 1897), Volume II, p550.

5. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ontario: Collier-Macmillan Canada, 1976), p104.

6. Dan Kennedy (Ochankugahe), ed. James R. Stevens, Recollections of an Assiniboine Chief (Toronto: McClelland and Stewart, 1972), p19.

7. G.B. Grinnell, Blackfoot Lodge Tales: The Story of a Prairie People (London: David Nutt, 1893), p287.

8. Thomas Mails, Dog Soldiers, Bear Men & Buffalo Women (Englewood Cliffs, N.J.: Prentice-Hall, 1973), p44.

9. McLean, Canadian Savage Folk, p230.

10. Oliver, The Canadian Northwest, Volume I, p83 & 87.

11. ibid, p321.

12. ibid, p371.

The Emergence of the Métis Nation

White law was first invoked in the plains against the half-brothers of the Indians. These "half-breeds", known initially as Bois-Brulé and later as Métis, emerged as a distinct people along the shores of the Red River in what is now southern Manitoba. They were the offspring of mixed French-Cree couples; their numbers were subsequently enlarged by an influx of Scottish and Irish immigrants some of whom interwove with the southeastern plains tribes.

The Métis nation was spawned and nurtured by the struggle for dominion over the fur trade between the French and English fur lords in the vast northwest.

The Hudson's Bay Company and the Montreal based North West Company were struggling for a trade monopoly in the plains as the 19th century opened. The Red River Valley was the last outpost and whoever wrested control of this frontier's edge would win the plains as their prize.

The Hudson's Bay Company had been granted exclusive jurisdiction in 1670 over the watershed of Hudson Bay, which included the region where the Red River and Assiniboine converged. In an effort to obtain a stable base for their southern operations, the Company granted the district of the Assiniboine to Lord Selkirk in 1811 on condition that the valley was populated by at least 1,000 families in three years. Predictably, the Company maintained its exclusive rights of trade in the arrangement with Selkirk.[1]

Selkirk, acting on behalf of the Bay's monopoly, attempted to cut communications between the Nor'Westers and their head office in the east, and to disrupt their trade in general.[2] The Nor'Westers were infuriated by these obvious manoeuvres; they were also feeling threatened by the advent of large scale British settlement in the critical territory. The Nor'Westers, after unsuccessful attempts at reprisals on their own, came to regard the Métis as potential and strategic allies. The North West Company encouraged the Métis to perceive of themselves as a separate nation threatened by the intrusion of the immigrants and their sponsor.

In fact, the Métis needed little persuasion. Not only had their rights been completely disregarded by Selkirk and the British company, but discriminatory legislation was introduced at whim. Selkirk announced a series of proclamations designed to control the ominous organizing of the Métis; he restricted their buffalo hunts, the export of pemmican by the Métis outside the colony, and the use of bark for roofs and wood for fuel.[3] The notorious tactic used by the Hudson's Bay Company of using its legislative powers against the Métis had begun.

The Nor'Westers were quick to fan the rage of the Métis.

During the winter of 1814-15, Duncan Cameron of the Nor'Westers appointed Cuthbert

Grant as Captain of the Métis, and other influential Métis as officers; both groups had common interests in preventing settlement of the area. The Métis called upon the Hudson's Bay Company to compensate them for the land granted to Selkirk. Their pleas ignored, the Métis harassed the settlers at Red River in the spring, driving cattle and men from the fields and discharging their guns in warning. The Governor of the District, Miles Macdonell, surrendered to the North West Company, and Peter Fidler, a Hudson's Bay Company Métis employee, was temporarily put in charge of the colony. Renewed attacks by Métis forces resulted in Fidler signing a treaty agreeing, among other things, that all settlers would retire from the river in return for a guarantee of safe passage.[4]

The settlers fled the colony, but returned a few days later with a new contingent of immigrants. In the fall, Robert Semple, the new Governor, arrived and demanded that the Métis surrender the North West fort and its pemmican supply. The Governor finally seized the fort, severing the Nor'Westers' trade route.

The conflict escalated. Fifteen Métis delivering a shipment of pemmican were intercepted by Semple and 24 armed men. Grant sent a Métis emissary to demand Semple's surrender. An argument ensued. Semple grabbed the reins of the Métis' horse and attempted to disarm him. A shot was fired by a hot-headed settler and the battle began. The Battle of Seven Oaks, as this incident was to be known, left 20 settlers, including Semple, and two Métis dead. The settlers left the shattered colony.[5]

By January 1817, a group of Swiss mercenaries, under the direction of Selkirk himself, had captured the North West Company's Fort Douglas. Cuthbert Grant of the Métis allowed himself to be taken before a grand jury in Lower Canada for the murder of Robert Semple. He was dismissed and returned to his home. However, the North West Company laid full blame for the events surrounding the Seven Oaks incident squarely on the Métis. From this point on, the Métis became autonomous in their endeavours to regain their rights.

As the Métis numbers, strength, and importance flowered, so too did their unique culture and society. Pemmican was crucial in the expansion of the fur trade. It was a nourishing combination of dried beef and lard which virtually defied decomposition for long periods of time. The Métis were exclusive suppliers of this staple for a number of years to fur traders "opening up" the west. To earn their livelihood and supply their own needs, the Métis convened in tremendous numbers in the spring and fall to hunt the buffalo en masse. The laws and mode of control of the hunt were similar to those of most plains tribes. These hunts occurred regularly from 1820 and reached their peak in the 1840s.[6]

Hundreds, and often thousands, of Métis converged at Pembina, the camp bristling with expectation. The day before the hunt was scheduled to begin, a general meeting elected officers to ensure a successful hunt, and regulations were established that were agreeable to those present. A chief was selected to have authority over the whole camp and to settle all disputes arising during the trip; he was usually a man of years with much experience, ability and respect.[7]

Captains were elected (usually ten), each commanding a number of soldiers. They were responsible for maintaining order, enforcing the regulations of the hunt, and supporting their chief in carrying out his directions. A crier then publicly announced to all the camp the election and regulations which were immediately in force. As in the Plains Indian hunts, the rules were few, specific to the hunt, and quickly, often severely, enforced for the benefit of the group.

The first offence usually resulted in the saddle and bridle of the offender being cut up; for the second offence, the coat was ripped off the wrongdoer and destroyed; for a third, flogging or banishment was likely. The captains and chief met at the end of the day to determine the fate of offenders. Few "crimes" came before the group because the Métis, impatient of laws and other restraints of civilization, accepted the individual responsibility which such an attitude required if their society was to survive.[8]

The Métis were reported to have been a law-abiding people concerning their own system.[9]

This independent people enjoyed an era of relative prosperity and autonomy in the 1820s and the early '30s. The district passed back into the grip of the Hudson's Bay Company at the beginning of this period, settlement slowed down, and the fur trade expanded. The Métis were employed as police by the Company; an Indian uprising appeared imminent, and the settlers themselves proved to be a law-defying group.[10] The Métis participated to some extent in the council that advised the Governor, and held positions of magistrates and sheriffs on occasion.[11] This mutual accommodation was short-lived, however.

The Hudson's Bay Company had the legal authority from Britain to pass laws and assume all governmental duties in accordance with British tradition. The Company began to flex its muscles, prostituting its powers in the furtherance of its own interests. Company officers administered justice. "Resistance to its decrees was sometimes active, sometimes passive, but constant."[12]

In 1835, the Company passed an oppressive set of proclamations in an effort to bring the Métis to their knees. Theft was re-defined to included such acts as removing furs from the area without an export license from the Company, with public flogging as the punishment. Prices were fixed, and import duties were slapped onto most goods. "The Company also threatened the Métis, by reminding them that the land on which they lived could be taken away from them if they continued to trade illegally."[13] Incidents concerning this legislation came dangerously close to violence. In 1836, Louis St. Denis was flogged publicly for violating the Company's trade restrictions. The local police had to be called upon to protect the man who administered the punishment from the enraged Métis. The Company's laws proclaimed in 1835 were so ineffective and unpopular that they were rescinded in 1840.[14]

During the 1840s, the U.S. outlet for furs became a direct threat to the Company's economic monopoly, and it continued to use legislation to protect its trading enterprises. The Company went so far as to censor personal mail. If a person was caught engaging in illegal trade, as defined by the Company, his land deed and all other Company "benefits" were withdrawn. Unrest mounted; an Imperial regiment was sent to the colony and martial law was imposed from 1846 to 1849.[15]

In 1848, a number of meetings were held and appeals made concerning the discriminatory and unpopular nature of justice in the district. Major Caldwell, the newly appointed Governor, sent a letter to the council:

> "I would particularly direct your attention to the allegations which have been made of an insufficient and partial administration of justice ... and the hardships said to follow from an interference which is reported to be exercised in preventing half-breed inhabitants from dealing in furs with each other, on the ground that the privileges of the Native Indian of the country do not extend to them."[16]

Finally the Métis openly defied Company law, breaking the Company's trade monopoly and its political control. An 1849 trial of four men, including a Métis named Guillaume Sayer, charged with violating Company trade restrictions, was underway when the confrontation between Métis and the Company occurred.

Louis Riel Senior surrounded the court house with several hundred armed Métis and demanded that the accused be set free. The accused were found guilty, but released with no sentence. Restrictions concerning Métis trade were repealed in May, 1849.[17]

In addition, courts from around this date were held in both French and English, a direct concession by the British company to the Métis and French colonists. The power of the Company continued to wane. The Métis filled the power vacuum to some extent, but were to enjoy their resurgence of influence for but a few short years.

By 1869 the Company no longer governed the colony. The Métis had successfully combatted discrimination in the laws and administration of justice and were firmly in control of their own destinies. However, a drought and hordes of grasshoppers had plagued the area in the '60s; the white farmers were demanding outside assistance in the face of starvation. The company, no longer able or willing to administer the colony or provide relief, transferred the region to infant Canada behind the backs of those residing in the Assiniboine. The stage was set for the 1869 uprising of the Métis.

Endnotes

1. E.H. Oliver, The Canadian Northwest: Its Early Development and legislative Records (Ottawa: Government Printing Bureau, 1914), Volume I, p154.

2. G.F.G. Stanley, Manitoba 1870: A Métis Achievement (Winnipeg: University of Winnipeg Press, 1972), p9.

3. ibid, p10.

4. D. Bruce Sealey, and Antoine S. Lussier, The Métis: Canada's Forgotten People (Winnipeg: Manitoba Métis Federation Press, 1975), p39.

5. ibid, p41-2.

6. Joseph H. Kinsey, Strange Empire - The Story of Louis Riel (Toronto: Swan Publishing Co., 1965), p257.

7. H.M. Robinson, The Great Fur Land or Sketches of Life in the Hudson's Bay Territory (New York: G.P. Putnam's Sons, 1879. Reprinted by Coles Publishing Co., 1972), p149.

8. Kinsey, Strange Empire, p261.

9. Sealey, and Lussier, The Métis, p56.

10. Stanley, Manitoba 1870, p15.

11. Oliver, The Canadian Northwest, Volume I, p63-69.

12. Kinsey, Strange Empire, p56.

13. Sealey, and Lussier, The Métis, p60.

14. ibid, p61.

15. ibid, p63.

16. Oliver, The Canadian Northwest, Volume I, p345.

17. ibid, p352.

Traditional Western Justice

One third of the aboriginal people of the region we now call Canada inhabited the west coast and its mountain border before European contact.[1] The Indians of this region were scattered in numerous tribes possessing some of the most highly structured societies to be found anywhere on the continent.

The coastal fishermen in particular were divided into classes by birthright, with the nobles firmly in control. Ranking in society was emphasized by the potlatch; this unique ceremony bonded all but the slaves in strong clan groupings, and emphasized the value of giving as a means of establishing a person's worth. Daily life was filled with rituals appropriate to one's station in life, perpetuating the vision of ideal behaviour in these strong cultures.

The significance of giving property was carried through to the settling of disputes, where the potlatch was utilized to provide goods indicating the seriousness of the crime committed by the member of one clan or tribe against another. If the offence was heinous enough, the offended clan required a life as satisfaction. Loyalty to the family was such a powerful force, that the person chosen to give his life for his clan's honour went to his doom willingly and with grace.

Endnote

1. Wilson Duff, The Indian History of British Columbia; Volume 1, The Impact of White Man (Victoria: Provincial Museum of Natural History and Anthropology, 1964), p8.

Traditional Justice of the Cordillera Tribes - A Summary

The tribes who inhabited the spine of mountains in British Columbia's interior varied tremendously in their life-style, social structure, and appraoch to justice. The Interior Salish, Kootenay, Chilcotin, Carrier, Tsetsaut, Tahltan, and Tagish nations often differed considerably among their member clans. The heritage of each tribe was rooted in their original area of habitation, the culture of neighbouring clans, and the environment and the resulting requirements for a productive and stable life-style.

The highly-structured societies of the established communities of the northwest coast were softened by the influence of a greater emphasis on hunting and thus seasonal migrations in the northern Cordillera tribes.

Those clans closest to the powerful trading nations of the Tlingit and Tsimshian such as the Carrier, Tahtlan, and Tagish, had more structured societies, powerful clans, and strong hereditary chiefs. The justice system of these tribes revolved around the notion that the clan paid for and received settlements of disputes between groups through the potlatch. However, as with their northern Athabaskan neighbours to the east, the individual, regardless of station, was more prone to personal punishment, in addition to the clan settlement for an individual offence, than the fishing nations of the coast required. The unique needs of the mountain dwelling civilization were reflected in societies where two main groups existed, nobles and commoners, where hard work and proper behaviour allowed individuals to cross into the upper strata.

Those living in the valleys to the south were governed by similar influences. The Kootenay, for example, originally hailed from the plains, driven into the mountains by the Blackfoot just prior to white contact.[1] Such Kootenay features as loosely-knit bands, each possessing a chief and elders' council as governing bodies, are fairly typical of the Prairie form of social and political organization. Chieftainship was hereditary, however, unlike the elective system of the plains, in part as a result of the more permanent nature of Kootenay settlements. They did not possess clans, secret societies, or distinct classes, and thus differed notably from typical coastal society.[2]

There were few laws imposed or enforced by the community. Eenforcement was difficult as the Kootenay did not have the soldier societies of the plains Indians.[3] The individual most often avenged an offence committed against him or his family. The husband of a wayward wife, for example, could kill the adulterous couple, or maim his wife and send her to her lover. A girl indulging in pre-marital sex could be beaten by her parents. A murderer could be killed by the victim's relatives, or, through concern over possible costly blood-feuds, accept goods as compensation for the loss.

On the whole, the individual could punish or demand compensation on his own, within certain ground-rules long established through tradition.

Among the bands of the Interior Salish, those closest to the coast adopted the social and legal structures of their western brethren; those farther inland had no clans, secret societies, and no restriction on marriage except closeness of kin. Their society was similar to that of their neighbours, the Kootenay.[5]

From this brief overview of the mountain inhabitants of the Cordillera, it is apparent that these tribes both adopted and adapted the customs and social institutions of those bordering their territory. Their needs in terms of rules, enforcement, and government were a unique blend of the requirements of a semi-permanent settlement and seasonal migration, between individual livelihood and communal living between individual and group responsibility.

The Carrier provide an apt illustration of the society and rules of a mountain people.

Endnotes

1. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 1963, 6th Edition), p359)
2. ibid.
3. Edward Curtis, The North American Indian (Volume 7; New York: Johnson Reprint Corp., 1970), p120.
4. ibid.
5. Jenness, The Indians of Canada, p352-3.

Traditional Justice of the Carrier

Where the upper branches of the Fraser River, teeming with salmon, cut valleys in the mountains, there lived a people who called themselves "Witt-T'Zo-Witt-De'Hn" or "valley inhabitants between the mountains."[1]

They were known in later times as Carrier, Porteur, Takulli, Hagwilget, Dené, and Babines, each reflecting the tides in their history. They were divided into five sub-tribes who were governed by a head chief, along with the other clan chiefs in his group.[2] Although there was no over-all tribal government, the clans in the nation consulted each other through their head chiefs on matters of common concern.[3]

Carrier society was composed of two classes. There were few, if any, slaves. A commoner with diligent labour could reach noble rank by giving potlatches and assuming a title.[4]

Chieftainship was hereditary, the heir being named before the incumbent's death. In the case of a dispute for the title, the other chiefs would gather at a potlatch held by each of the rivals and choose who would become head of his clan. If the one who failed to be selected continued to act as though he were the new chief, he was warned by the head chiefs in front of all the villagers. If he did not heed their warning, a representative of the new chief might harm or even kill the renegade, the people uniting in their protection of the perpetrator.[5]

The Carrier clans lived in central villages, the inhabitants leaving for several weeks or months at a time to hunt and fish on the land designated for a family's use by birthright, or as named by the previous holder.[6] As all clans and families held a parcel of land in trust, trespassing and poaching were unacceptable acts.

Trespassing or poaching without permission or need, thoughtlessly endangering the lives of the legitimate holders by over-hunting or fishing, was a serious offence. The head chiefs often intervened and arranged for the trespasser or poacher to provide goods as a form of repayment for his crime.[7] If the offender persisted in his wrong, he could be injured or killed by the rightful owner of the territory without the need to pay compensation.[8] It was also believed by some Carrier that a person who repeatedly and selfishly trespassed would experience ill health or paralysis for his misdeeds.

Murder occasionally resulted in the death of a prominent hunter and provider, as well as blood feuds. Pains were taken to prevent this form of revenge in the interests of preserving life and the peace of the clan or tribe. The chiefs encouraged settlement for the offence through compensation and apologies. If the murder occurred within the clan, the chief was responsible for restoring the peace. Murder between clans was settled by the head chief in consultation with his group. "When they involved other phratries the heads of the phratries consulted, first with their clan chiefs, then with each other, decided the issues at stake, and arranged for any necessary compensation."[9]

Both the offender and his clan or phratrie were responsible for repaying the victim and his group when compensation was arranged. The murderer was at times required by the chiefs to fast for extensive lengths of time. A potlatch was then hosted by the involved chiefs and the murderer and his clan or sub-tribe would distribute enormous quantities of food, territory, tools, and later, furs and blankets to the offended party. At times, the victim would be replaced by a person of similar standing.[10] A girl of marriageable age was sent to the offended party's residence, waiving all the usual ceremonies, conditions and bride-price. She became a member of the victim's clan in an attempt to make up the loss.[11]

Settlement of such conflicts required a peace ceremony to illustrate the sorrow of the offender and his family.

> "If somebody kills your brother or sister, they will put blankets on, and a costume of a headdress, moccasins and leggings; and they would have a feast, having gathered together all the people. This man who killed your brother, he will dress in the costume and will blow white feathers (author's note: white feathers were eagle down, a symbol of peace) to the tribe that has declared the war; he shakes the rattle, dances, and gives away a lot of things."[12]

Peaceful co-existence was reclaimed in a like manner in other disputes. If two leading families quarrelled, the head chief might summon the quarellers to his lodge where the floor of his dwelling was strewn with white feathers. He sang his personal song while dancing and shaking his peace symbol, usually a rattle. He then delivered a speech reminding the listeners of the years spent on bringing him to the position of their chief so that he could calm the conflict. Usually the parties would submit to their chief's advice to settle their differences.[13]

The wrongdoer's clan was at times unable to provide the necessary goods to restore good relations with another clan or tribe. The head chief would then seek assistance from another clan in maintaining honour and preventing a feud. Usually the clan of the offender's spouse would lend this aid. The debt was repaid within two years at a potlatch, this lapse of time being necessary for the goods to be gathered or produced.[14]

Children were counselled by their elders from an early age concerning the way to lead a productive, respectful, and happy life. They were instructed carefully throughout the winter months on the taboos and values of their community as dictated by the experience of their forefathers. The young were taught that powers greater than ordinary humans would punish transgressions of certain rules of behaviour. Adolescent boys were not to eat certain kinds of food, were not to gallop down a hill, only up. A girl entering womanhood was to abstain from eating fresh meat and berries, lest she become sick or die. A girl at such an age was to travel well behind her family. Youth were warned that they should be respectful to their elders and to the unfortunate.

> "Misfortune should never be mocked nor sorrow ridiculed. When a widower mourned his loneliness, weeping inside his hut, the boy should softly draw near and ask in low tones whether a little food would be acceptable, or a few sticks of wood to replenish the fire. He should never ridicule the animals, or gloat over success in hunting... In his play he should never be uproarious, but observe a certain dignity and moderation."[15]

The Carrier possessed an unique blend of the west coast approaches to justice coupled with the northern Athabaskan. The individual was held to be responsible for his actions, and underwent some sort of punishment and bore the brunt of the compensation to the victim's side. At the same time, the offender's clan was the source from which settlement — embodied in the potlatch — was drawn. The chiefs were responsible for maintaining peace in their villages, and carried out their duties with vigour.

The Carrier nation was governed by natural justice brought about through negotiation and notions of fair play. The laws of the society were ingrained in youth so that they would carry on the wisdom of their ancestors. The individual gained status or lost it through their adherence to the code of behaviour as set down by their elders. Strong family ties ensured that the clan members' behaviour was kept in check through their concern for each other and their neighbours at large.

Endnotes

1. Gloria George.
2. Andrew George, The Carrier Indian (Smithers, Smithers Interior News, April 6, 1977), p4.
3. Diamond Jenness, The Indians of Canada (Ottawa, Information Canada, 1963), p.367.
4. ibid, p.365.
5. Diamond Jenness, "The Carrier Indians of the Bulkley River: Their Social and Religious Life.", in the Bureau of American Ethnology, Bulletin 133 (Washington, D.C., 1943), p.515.
6. Mary George.
7. Jenness, The Indians of Canada, p366.

8. Mary George; and Jenness, The Carrier Indians.
9. Jenness, The Carrier Indians, p485.
10. Mary George.
11. Jenness, The Carrier Indians, p519.
12. Mary George.
13. Jenness, The Carrier Indians, p519.
14. Mary George.
15. Jenness, The Carrier Indians, p522.

Traditional Justice of the Northwest Coastal Indians

The Tlingit, Haida and Tsimshian nations all lived on and from the sea, and through their voyages came into regular contact with each other; a cultural and material exchange occurred. Customs, values and structures were similar in the three nations, just as they possessed common approaches to defining and controlling unacceptable behaviour.

All three societies were composed of phratries, or sub-tribes, and further subdivided into clans and families. In the villages of the region, nobles, commoners, and abundant slaves could be found.

Among the Tsimshian, and to some extent the Haida, a ruling or royal class existed who intermarried exclusively among themselves.[1] Power was consolidated in the hands of the upper class and the ruling chiefs of the houses and clans. The powerful secret society of the "Kwakiutl" was adopted by the Tsimshian and Haida, but never attained the influence it wielded in the south.

The chiefs of the Haida, for example, maintained the rights of initiation within their control, restricting membership in secret societies to their kinsmen; any "union of initiates into groups that might usurp the control of the villages" was forbidden.[2]

The clans benefitted and lost when individuals violated the rules of the community in these northern fishing villages. In the event of an offence between clans or houses, the relatives of the two parties met to determine the course of action to be adopted through negotiation. In the Haida nation, the family of a murder victim would decide together what satisfaction was to be demanded of the offender's relatives.[3]

Throughout the region, "murder, seduction, wounds, accidental killing, loss of articles belonging to another, refusal to marry a widow according to law" was settled by the offender's clan through the provision of compensation in valued articles.[4]

An individual of high standing was often above the law of the community, and other members of the family might even have their life forfeited or become slaves for the offences of the ruling members. The concern with status and the desire to conduct oneself according to one's rank kept the ruling class somewhat in check; the hope of improving their standing in the community, coupled with avoidance of punishment delivered for some offences such as adultery and incest encouraged the commoners in northern villages to obey their people's code of behaviour. The most exacting modes of behaviour were followed for fear of personal shame or casting shame upon a clan through the actions of the individual. A person could lead a happy, content life if he realised his place in his community and acted in such a way as to maintain or improve his status.

The Tlingit society will be described in the following pages in an effort to illustrate the highly structured societies of the northwest coast Indians and their concepts of justice.

Endnotes

1. Diamond Jenness, The Indians of Canada (Ottawa, Information Canada, 1963, 6th Edition), p337.
2. ibid, p334.
3. Edward Curtis, The North American Indian, Volume 11 (New York, Johnson Reprint Corp., 1970), p121.

Tlingit Traditional Justice

Tlingit society was based on status, rank being acquired through birth and wealth. The coastal settlements were inhabited by nobles or "anyeti," commoners, and slaves, divided first into three phratries, and further into numerous clans.

Political and social dominance was lodged firmly within the clans. Each clan possessed distinct hunting and fishing territory and was led by a chief. The actions of any individual automatically affected his or her clan as a whole and its position in the phratry. A person's behaviour, especially when of high rank, was governed by the endless considerations concerning whether an action would bring shame upon himself and his fellow clansmen. Crime and punishment were married to the structures within the society of the Tlingit.

There were clearly two different policies for crimes committed within a clan, and for those between clans. Murder, adultery and theft generally went unpunished if the offender was from the same clan as the victim. However, a person's standing would certainly suffer within his clan if the action had been unwarranted. A clan would generally only punish one of its members if the offender committed incest, prostitution, married a slave, or indulged in witchcraft.[1]

Marriage was forbidden within the three phratries, these divisions being the equivalent of the European family. Incest was defined as sexual relations by members of the same phratry no matter what the actual blood kinship. A couple violating this rule could be put to death by their respective clansmen.[2] A man of high rank might, however, find himself merely exiled.

If a person brought shame upon his clan by such acts as blundering during a ceremony, or being observed in close proximity to his mother-in-law, he was ridiculed by the other members. If a man committing a shameful act was upper class, having, for example, allowed a slave to see him naked, or perhaps injured his face by falling in public, he was required to provide a feast for his brothers to wipe away the shame he had caused his clan.

Behaviour that brought little more than reprimands if contained within a clan, brought reprisals if committed outside the clan. In the event of a murder in the latter circumstance, the clans involved negotiated the degree and type of compensation. Often the thief of a person of equal rank as the victim was demanded of the offending clan; on other occasions goods and services might satisfy the offended family. If a life was required, the clan representatives met to decide upon the person who would forfeit his life to equal the loss of the victim. The murderer himself may not have been selected to be executed, as the prime consideration rested with ensuring the person selected was of similar rank and importance as the victim. A time was then set for the settlement, the unfortunate one destined for execution usually allotted enough time to prepare himself to willingly meet his death.

"On the day set for the execution, the man put on all his ceremonial robes and displayed all his crests and emblems. He came out of his house, stood at the doorway, and related his history, stressing the deeds that he and his ancestors had performed. All the villagers were gathered around for this solemn occasion. He then looked across to the clan whom his death was to satisfy to observe the man who had been selected to kill him. If this man was great and honourable he would step forth gladly; but if the man was of low rank he would return to the house and wait until a man of his own rank or higher was selected to kill him. When this was done he stepped forth boldly with his spear in his hand, singing a girl's puberty song. He feigned attack but permitted himself to be killed. To die thus for the honour of one's clan was considered an act of great bravery and the body was laid out in state as that of a great warrior."[3]

After satisfaction had been exacted from his clan, the murderer, especially if of high rank, often maintained his liberty, but would be treated with disdain for having brought shame to the whole clan. If the offender was of low status, he could have been delivered into the hands of the family that had to surrender a person of execution, to be their slave. The murderer might also be given to the victim's clan in addition to presents as reparation for the offence.

Adultery between clans was most often punishable by death, the husband acting as the executioner of both offenders. The spouse might forgive the woman provided that her clan furnished property to restore his honour. If the adulterer was of important standing or a member of a particularly influential clan, the husband might accept goods from his own clan, anxious to avoid a confrontation.[4] In the case of adultery between a man of low rank and a noblewoman, the wife's clan would kill two of the man's clansmen to underline the seriousness of the offence. The adulterer's clan would then be expected to offer another of their members of high rank for execution; upon such an offering, the woman's clan would compensate for the death of the first two with goods. A woman of important rank who persisted in adulterous behaviour with a number of men would meet death at the hands of her own clan.[5]

A thief from another clan might be killed by the injured party, or the victim's clan could have accepted some form of compensation. Assault generally resulted in a demand for recompense, as in the case of accidental death or injury. If a specific person caused another to commit suicide, the life of a clan member of equal standing could be demanded.[5]

Witchcraft was a serious crime, as it then was in most parts of the world. Misfortunes such as bad luck in hunting or love, death, illness, and the commission of an heinous act by an otherwise reputable person were attributed to witchcraft. Sorcerers were singled out in a community with the aid of dreams and shaman. Persons so identified were killed immediately. The crime of witchcraft needed little concrete proof and was thus subject to considerable abuse. Men of influence who violated a Tligit law could claim to have been bewitched and thus not responsible; nobles could also use this charge to dispose of rivals.[7]

Negotiations by the head men when a dispute flared were conducted in a solemn atmosphere, often the sweat houses. Upon the completion of a settlement, a peace dance was convened, attended by all in the village, and lasting several days.

Tlingit justice was as complex as the social stratification was intricate. An action might be an offence in one circumstance, and merely an annoyance in another; one individual might lose his life for the same act that another might only be reprimanded. There was one law for the nobility, and one for the common man. Emphasis was focused on repairing the damage inflicted, and restoring harmony, rather than punishment of the offender. At the same time, the payment for a crime by the clan would have represented a strong force in crime prevention. A hasty action by an individual could have led to the demise of a brother, father, or uncle. In addition, the perpetrator of an offence was ridiculed, and would be reduced in stature even to the point of enslavement. Violation of the Tlingit laws and taboos was infrequent, the risks to the whole settlement being too great.

Endnotes

1. Kalervo Oberg, "Crime and Punishment in Tlingit Society", in Indians of the North Pacific Coast (Toronto: McClelland and Stewart, 1966), p211.
2. ibid, p212.
3. ibid.
4. ibid, p213.
5. ibid, p214.
6. ibid, p216.
7. ibid, p221.

Traditional Justice of the Southern Coastal Tribes in the West

The Bella Coola, Kwakiutl, Nootka, and Coast Salish nations of the west coast were more flexible and less structured societies than the nations of the north. The hold of the nobility was reduced by the existence of secret societies and other non-hereditary associations. The emphasis on hereditary rank diminished from the more northerly Kwakiutl to the Coast Salish above the territory now referred to as Washington.[1]

Although the southern Indians did not as a group divide their nations into large phratries, they did possess a variety of clan divisions, some forbidding marriage outside the clan, others within.[2] A brief description of each society and its approach to crime shows the considerable variance among the four nations.

The Bella Coola of Salishan stock, tucked in the mountains beside the Kwakiutl, were a settled people whose life was divided into two main cycles: the winter season of potlatches and religious ceremonies, and the summer when the major food stock was accumulated. As all property rights, names, ceremonies, and other rights were exclusively held by each clan, marriage was forbidden outside the clan. Rank and chieftainship were not hereditary. Rather, a man who convened four potlatches and affirmed certain ceremonies could join the society of chiefs that governed his village. All that was required was sufficient wealth to hold the potlatches, and recognized membership in the clan for a person to seek a chieftainship.[3]

The secret societies, religious associations with special rights and powers to conduct ceremonies throughout the winter months, were open to most commoners and nobles, as well as to both men and women. If a person led an active, productive, and proper life according to the values of the community, he or she could look forward to a respected place in the Bella Coola nation.

The Coast Salish were generally class-conscious. Chieftainships were hereditary within the clans, the position usually going from father to son.[4] Secret societies existed among the Coast Salish, but were not as influential as in other tribes of southern British Columbia.

The nobility were taught from birth that they alone possessed the knowledge to behave in a proper and respectable manner. Lying, stealing, and disobeying elders' advice were strictly forbidden. To defy the rules of their class was seen to be common and demeaning.[5] If a person persisted in behaving in an unacceptable manner unbecoming to his position in society, he was likely treated as an inferior. Conversely, a person of a lower standing in the community might raise his status in the eyes of his neighbours by behaving in a manner befitting someone of a high station. Public opinion, then, among the Coast Salish was a strong factor in directing behaviour in accordance with the standards of the ruling class.

The Kwakiutl society was a rich blend of characteristics of tribes to the north and south. A person in a Kwakiutl village devoted much of his daily existence to improving the standing of himself and his clan. Each clan possessed a specified number of noble positions accompanied with names, crests, special ceremonies and territorial rights.[6] These noblemen acted as chiefs, and were expected to demonstrate an utter disregard for wealth and property. The potlatch, as in other west coast tribes, provided as one of its functions the opportunity for chiefs and nobility to exhibit their unbounding generosity.[7]

The secret societies of the south were an extremely powerful force in Kwakiutl villages.

> "In the southern villages the members grouped themselves into fraternities according to the supernatural being that had taken them under its protection, or, viewed from another angle, according to the type of dance and dramatic performance for which they had qualified; and all the inhabitants of a village separated themselves into two groups, initiated members or Seals, and uninitiated and super-annuated individuals called Sparrows."[8]

These societies have been reported to have been so influential that the members practically controlled every aspect of life during the ceremonial season, superseding the usual governing structures for its duration.

Decorum and ritual designed to increase or maintain an individual's standing in a Kwakiutl community were so all-encompassing that even the most aggravating of circumstance was not to disturb the normal course of events, or bring shame to a person's name or clan. For example, on at least two occasions recorded, a man was murdered during a feast by his host in full view of all the guests.

> "The dead man's friends went on with their eating, and said nothing. Even after the feast they did not remove the body...to this day it is a reproach to them and their descendants that they had the courage to sit still in the house of a murderer who might shoot any one of them the next moment. But had they fled, or even stirred uneasily, their ignominy would have been even greater."[9] (Unfortunately, Curtis did not note the fate of the murderer).

Another illustration of the stringent adherence to accepted procedure, regardless of the consequences, is found in the first voyage in a war. The initial party of scouts to set out to war was duty-bound to kill the occupants of the first canoe — friend or enemy - encountered after the waters surrounding their settlement had been traversed. This act was necessary to avoid disaster during the battle to come and was to occur even if the victims were relatives and fellow tribesmen.[10]

Disputes among the Kwakiutl were generally settled with the destruction or distribution of property at a potlatch, the nobles of the clan often assuming the disagreements of the commoners as their own personal cause.

The Nootka communities were composed of nobles, commoners and slaves. Chiefs governed the villages, one usually being recognized as the head; a chief's decisions were formulated with the advice of a council of respected men, but his influence was often so great as to make these deliberations little more than ritual.[11] The chief of a clan had exclusive privileges, such as the sole right to harpoon a whale.[12]

These powers, however, were balanced by certain duties the chief was required to undertake with his recognized position of authority. "It was his duty to protect the weak, settle disputes, recover stolen goods (peacefully if possible, forcibly by his slaves if he must)."[13]

The chief was not saddled with the sole responsibility for intervening in conflicts; everyone had the right to intervene in a quarrel, and were often sought out by the parties for assistance. Public opinion was the most formidable tool in Nootka society in reprimanding and controlling undesirable behaviour. A respected individual in the community could assume the power to reprimand an offender, expressing the public sentiment on the matter. A person who offended another could find himself excluded from all activities and deprived of the aid of the community. This punishment was apparently quite effective in controlling quarrelsome, self-centered, and rebellious behaviour of members in the village.[14]

There were a variety of taboos during the Nootka winter ceremonial season that were also enforced by the public. Ordinary names and songs were not to be uttered, having been replaced by ceremonial ones. Gum chewing was forbidden and punished by pushing the jaw to one side until the pain caused the offender to cry out. Killing a deer, or eating venison was considered to be so serious an offence during this period that the indulger may have been threatened with the loss of his life.[15]

Individuals were selected to act as ceremonial police during the shaman's spiritual dances, enforcing special taboos or rules.[16] On the whole, the Nootka were actively encouraged to display model behaviour by the structure and lifestyle of their settlements; they were expected to be amiable, to avoid and disapprove of the use of violence in disputes, to partake in Nootka ceremonial life in a respectful manner, and to display a keen sense of humour.[17]

The four nations of the southwest coast had both diverse and similar structures in their societies relating to the establishment and enforcement of their rules or laws of behaviour. All these tribes possessed three classes: nobility, commoners, and slaves, the nobility in effect being the chiefs or the ruling class. This upper class determined to a large extent what constituted an offence, or proper behaviour; the method of enforcement varied from overwhelming public opinion among the Coast Salish, to formal intervention by powerful chiefs among the Nootka. Secret societies existed in all four tribes, which, to varying degrees, established and enforced religious taboos during the winter that had the force of laws. In some societies the chieftainship was hereditary, in others subject only to the restriction of wealth, or rather an ability to give wealth away. The potlatch was common to all the southern tribes, and provided a vehicle for expression of common values, reaffirmations of positions of authority, recognition of changes in status, and celebrations of the cycles of life. The force of public opinion concerning an individual's conduct was brought to bare when a person's standing in the community was formally noted in these ceremonies. A happy, prosperous life was dependent upon a person's absolute conformity to the unwritten laws of his tribe.

Endnotes

1. Edward Curtis, The North American Indian, Volume 10, (New York: Johnson Reprint Corp., 1970), p137.

2. Diamond Jenness, The Indians of Canada (Ottawa: Information Canada, 6th Edition, 1963), p327.

3. ibid, p340-1.

4. ibid, p348.

5. Wayne Suttles, "Private Knowledge, Morality and Social Class Among the Coast Salish" in Indians of the North Pacific Coast (Toronto: McClelland and Stewart, 1966), p173.

6. Edward Curtis, The North American Indian, Volume 10, p137.

7. ibid, p143.

8. Jenness, The Indians, p344.

9. Curtis, The North American Indian, Volume 10, p154.

10. ibid, p102.

11. Edward Curtis, The Northern American Indian, Volume 11 (New York: Johnson Reprint Corp., 1970), p63.

12. Jenness, The Indians of Canada, p346.

13. Curtis, The North American Indian, Volume 11, p64.

14. Philip Drucker, "The Patterns of the Culture" in Indians of the North Pacific Coast (Toronto: McClelland and Stewart, 1966), p224.

15. Curtis, The North American Indian, Volume 11, p68.

16. Drucker, "The Patterns of the Culture", p227.

17. ibid.

The Era of the Fur Trade in the West

Early contact between Europeans and the pockets of Indian people who populated the western mountains and coast was sporadic and commercial. The first whites known to have landed on the coast were the Russians, who in 1741 weighed anchor off Tlingit territory.[1]

Exploration began in earnest upon the discovery of furs by Captain Cook in the Nootka Sound region in 1778. The men who followed had little interest in establishing white settlements, and even less in cultivating good relations with the tribes of the coast. A captain needed only to traverse the seas one time successfully to be able to retire for the rest of his days in luxury.[2]

Under such circumstances, force seemed to accommodate the acquisition of pelts in greater speed and abundance than peaceful barter. Traders were reputed to have murdered at the slightest provocation, and to have utilized any means, no matter how dastardly, to obtain their ticket to wealth. "The desperate measures used by the Europeans to gain furs included kidnapping and holding the chief or chiefs for ransom. Indians retaliated when and where they could."[3]

These violent acts were avenged by the victim's people upon the next ship of white men they encountered, the Indians assuming that all white men speaking the same tongue belonged to one tribe. These seemingly-unprovoked acts often led to further atrocities by the newcomers.

Violence was not the only tempest white men furnished the coastal people. New diseases in epidemic form swept regions, the first known outbreaks in the 1780s and '90s.[4] Many lives were lost in other alien ways. The fur trade encouraged the widespread introduction of the gun; at the same time, the new economic base encouraged competition for control of trade routes and led to devastating inter-tribal warfare. The scourges that white contact brought reduced the western Indian population to the extent that some settlements disappeared altogether.[5]

The Hudson's Bay Company extended its regime over the mountains in 1821 with "An Act for regulating the fur-trade and for establishing a criminal and civil jurisdiction within certain parts of North America". Under this mandate, the Company was granted a monopoly in the fur trade and the responsibility of administering the territory on behalf of the British Crown.[6]

The Company governed the area with absolute authority, devising its laws and regulations in secret.[7] This exclusive charter was renewed in May, 1838 for another 21 years.

During this period, the Company enforced its laws, developed in accordance with

English law, against all its employees, the settlers, and the Indian population when an offence was committed against a white man. Acts and attitudes declared to be "insolent", and petty offences by Indians were punished with a beating at the hands of Hudson's Bay officials; no trial was required, and there was no need to prove any law had actually been broken.[8]

Although all offenders committing major crimes were supposed to be tried in Canada, this procedure did not appear to have applied to Indians. In the early days of the Company's rule, Indians on Vancouver Island were at times subject to mock trials if their offence was considered serious. For example, a trial was conducted for the murder of a man called Wallace at Nisqually post; several Indians were accused of the deed. Jurors were imported from Oregon City.

> "Well may we say that therein was much hollow form for a little show of justice, when we are told that three or four of these men, during their deliberations, rolled themselves in their blankets, and before composing themselves to sleep remarked, 'Whenever you want an Indian hanged, awake us.'"[9]

And hanged they were.

In the northerly areas, the local Company clerks reigned supreme. Justice was dispatched on the spot, and often included the death or beating of innocent persons. This became known as "Club Law", and extended to the Hudson's Bay employees themselves. An incident in 1843 illustrates this summary justice:

> A youth named Tlhelh of Quesnel Village in the northern interior, referred to as New Caledonia, killed a man known as Belanger to the Company, and Waccan to the Indians. Waccan was reputed to be a brutal and cruel man, and there was considerable sympathy for the youth's actions among those who had suffered by Waccan's erratic behaviour. The Company detailed a Donald McLean from Alexandria to lead the search for the fugitive. (McLean had once written "One of the favorite maxims while dealing with Indians accused of a grievous misdemeanour was: Hang first, and then call a jury to find them guilty or not guilty."[10]) McLean set out with a band of other officials in tow to the village in question. Tlhelh's uncle was queried as to the whereabouts of his relative; upon hearing that this was a mystery, McLean exclaimed: "Then you shall be Tlhelh for today", and shot the elder. The old man's son-in-law rushed to his aid, only to be shot repeatedly until his lifeblood was spilled in the snow. McLean's carnage was not at an end, for before leaving the village he fired at the daughter-in-law who had her babe in arms; the woman survived, but her child was murdered by the white law enforcer. Another of the fugitive's uncles was coerced into hunting for the young man, and ordered to return with his scalp as proof the deed was done. Such an act was particularly repugnant to the old man, as scalping was never practised by the region's tribes, not even against an enemy. The uncle threw the bloody scalp into McClean's face to show his disgust and hatred for the Company's enforcer.[11]

> "Such were the ideas of justice prevalent in those days throughout New Caledonia. To punish a misdeed by untutored savages, white men, who should have known better, turned themselves savages and paid back tooth (or rather teeth) for tooth, the innocent sometimes sharing the fate of the guilty. Arrest and trial as a consequence of a fault were something utterly unknown among the lords of the lonely North."[12] (Italics are the source's.)

Violation of minor offences, even when the behaviour in question was clearly considered proper by the Indian tribe, was punished peremptorily. In 1844 a band of Cowichins of the Salish nation slaughtered and ate cattle grazing outside a fort being erected at Comosun.

> "When confronted the chief stated 'What! These animals yours! Did you make them? Are these your fields that fatten them? I thought them the property of nature; and whatever nature sends me, that I slay and eat, asking no questions, and paying no damages.'"[13]

Compensation was demanded by the white men despite the declaration that no offence had been committed. After threats and repeated firing of the fort's cannon, the tribe paid damages to end the escalating conflict.

The power of the Company was further consolidated in 1849, when it was granted the island of Vancouver by the Crown; the Monarchy maintained the right to repossess the land after five years if the Company failed to colonize, as well as the right to purchase the territory after 10. In return for this arrangement, the Company was made "lords and proprietors of the land forever."[14]

Douglas, a senior Hudson's Bay Company official, succeeded the first governor in a matter of months, and struck 14 treaties with the tribes of the Island, beginning in 1850. These treaties did not include surrender of Indian lands to the Crown.[15] It became apparent that the Hudson's Bay Company had no intention of settling the land, as their profits from the fur trade would dwindle under an influx of white immigration.

The requirements laid down by the Company for white settlers were so outrageous as to make a farce of their arrangement with the Crown. A person interested in settling on the Island was required to purchase the land and place five men or three families on every 100 hundred acres.[16]

The Company was vested with the power to legislate, set up a judiciary supported through liquor licensing schemes, and provide other governmental functions, with the aid of the only available white men; their employees, and a few scattered settlers.

In the early days of the Company's rule when the bands of the Island vastly outnumbered the white men, the new government was lenient with Indian offenders of

Company law. Tribes were encouraged to surrender their accused brothers, who were occasionally released with a reprimand, or even furnished with a gift. This arrangement was short-lived; the establishment of an armed force called the Voltigeurs tipped the power balance. With this ready and willing body on hand, the Company prosecuted Indians with the full force of their law. Douglas illustrated this new predominance of white law by personally leading his troops in an obvious show of force when an Indian committed a serious offence on the Island. Two examples illustrate his policy:

> In December, 1853, a shepherd in the employ of the Company was slain, allegedly by two Indians, one of whom fled to Cowichin, and the other to Nanaimo. Douglas set out in pursuit in a man-of-war with a full contingent of Voltigeurs on board. After being warned that all the settlement would be punished for the violation of white man's law, the Cowichin chief grudgingly provided Douglas with one of the accused. The enforcers then descended upon Nanaimo in search of the other suspect; Voltigeurs were hidden throughout the village grounds, with orders to seize the chief as a hostage and search the village if the Indians refused to cooperate. The situation was all the more explosive and painful, as the man that Douglas sought was the chief's son. Beaver pelts were offered in the customary fashion by the village as compensation for the loss. This was refused out of hand. Finally, a broken-hearted chief delivered his son to the English. Both men were tried and executed in Victoria.[17]

Following closely upon the heels of Douglas' first public exhibition of authority was another incident involving the wounding of a white man at Cowichin. The Governor again sailed to the village with his force and demanded that the accused be given up. The villagers, perhaps remembering the fate of the last Indian they surrendered to the Company, refused and prepared to protect their neighbour with their lives. For two days the two opposing groups remained deadlocked. The following dawn, the suspect presented himself dressed in full ceremonial paint and fine feathers. As he approached Douglas, the Indian raised his gun and fired towards the Governor, missing him by inches. This gesture was taken to be attempted murder of the Company's Chief Factor, and the Governor of the colony. The accused man was immediately judged by the Governor's staff, who proved to be swift and final in their finding. He was pronounced guilty, and summarily hanged in full view of his friends and relations.[18]

This hasty execution no doubt impressed the bands of Vancouver Island, as words never could, that the Company's law would be obeyed under British rules, and punishment would be rigidly exacted.

Acts 1 and 2, cap. 66, of an act approved under the reign of George IV in 1850, specified that all Hudson's Bay Company employees on the Island of Vancouver were commissioners or justices of the peace. Thus, the trials and executions of Indians by Company employees as described above were allowable under circumstances which would have shocked the British legal profession in the "mother land".

Lynch-mob procedures spread beyond Company employees to outright massacre on the Island. As the Company was the sole authority and interpreter of justice, the bands were at the mercy of its whims and brutality.

In the early 1850s, three white men deserted their employ in the Company to join the mounting search for gold farther north. The Company used bands as ad hoc police during this period to hunt down white fugitives in isolated regions. True to policy, local Indians were sent in pursuit of the three white men who were seen as fugitives by the Company of such import as to warrant a reward for their capture, dead or alive. The sailors were shot down in their forest flight and buried by the Indian trackers.

Blenkinsop, the Hudson's Bay official who enlisted the aid of aboriginal police, attempted to conceal the incident, but to no avail. Other Company workers were furious when the news broke, and doggedly refused to obey orders from their employers or the Company magistrate, Helmoken. The Indians who had committed the actual act were quickly isolated for legal reprimand, instead of the Company accusing its own own officers who were responsible for the deaths of the three employees.

The magistrate demanded that the inhabitants of Newittee village on the north shore of the Island surrender the "murderers", but was met with defiance.

> "Truer to themselves and to the right than were the white men, they refused to give up the perpetrators of the deed, but offered to give up the property paid them by the white men for the commission of the crime. This did not satisfy the European justice-dealers. Servants of the Hudson's Bay Company had been slain by the order of the officers of the Hudson's Bay Company. Someone must be punished, and as they did not wish to hand themselves, they must find victims among their instruments...Wellesley sent a force under Lieutenant Burton...against the Newittees. Finding their camp deserted, Burton destroyed the village, and made a bonfire of all the property he could find."[19]

The price of their homes was not seen as enough punishment for the Newittee villagers. The following summer several boats crept into their harbour while the people were engrossed in a potlatch, thinking themselves at peace with the Company. "Man, women, and children were mercilessly cut down, persons innocent of any thought of wrong against their murderers, and their village was destroyed".[20]

This massacre was but one tragic example of the high cost of allowing the Company to possess a trading monopoly and a legal monopoly at once; under such a system any action which would secure the Company's unquestioned right to profit was permitted by the passage of a law, or the allegiance of the judges or the enforcers. Not only the laws devised by the Company, but its policies, were enforced through the judicial process. There was no outside source of appeal for injustices committed by white authorities; there was no one to whom they could turn for protection against such atrocities. The only hope of ridding themselves of the menacing presence of the Company was outright slaughter, a step the indigenous people were unable or unwilling to take. The true feelings of the Indian people of the coast towards these intruders and their money-making justice is unrecorded, and can only be surmised by the few incidents related above.

> "The truth is, government on the Island thus far was mere sham...the chief-justice was a sham, the hireling of the monopoly, knowing no law...all that had been done by the power of the crown."[20]

The discovery of gold on the Fraser River on the mainland in 1856 spurred a rapid succession of events that brought an end to the Company regime, but not its influence.[22] Douglas, the Governor of the Island, proclaimed authority over the mainland in an attempt to control the hordes surging from the south in search of riches and willing to pay any price. The British government had to act quickly to avoid a facile absorption of the unpopulated (white) west coast by the hungry young nation to the south.

On August 2, 1858, the British Parliament passed an act bringing the Hudson's Bay economic and political monopoly in the west to an end. The act provided for a duly elected legislature, and annulled the jurisdiction of Canadian courts for serious offences.[23] Douglas was appointed Governor of British Columbia, thus maintaining the Company's influence in the affairs of state.

Before the legislature's establishment, the laws of the coast had been English, based on the traditions and history of British common and statutory law. With the creation of a local legislature and thus the capacity for local law and administration rather than Company proclamations, came the sudden development of a complex judicial system.

A supreme tribunal and summary court, a police magistrate and constabulary force, and half a dozen justices of the peace sprang into existence on the Island.

On the mainland, upholding the law of the Europeans was a more difficult matter, and required the use of Indian personnel as an interim measure. Douglas appointed Indian magistrates to try accused persons of their own tribe for offences against the English-based laws. "For this atom of authority every chief was ready to subscribe himself a slave."[24] The act of 1858 extended the jurisdiction of white law to actions committed by one Indian against another Indian.

Indians along the Fraser were used to apprehend fugitives, both white and Indian, who had escaped beyond the grasp of the local magistrates. The lack of white settlement, and the infusion of miners in the interior made an aboriginal police force necessary and effective, for a time. This marginal involvement of Indians as police and magistrates allowed for a brief and partial reprieve for the more isolated bands; they would enjoy a few more years of relative freedom from white justice.

The invasion of American miners along the Fraser etched a brutal new reality into the lives of the Indian tribes of the Pacific coast in a dimension that the Indian police or hunters were powerless to curb. Many of these intruders cared little for the life of any other, and thought as little of shooting an Indian as they might any other game of the forest. An explicit example of this blind prejudice is found in the massacre of 31 innocent Indian people in 1858; this tribe was widely known to be friendly to white men. The unprovoked slaughter had far-reaching effects on the village; the miners who had committed this outrage had also destroyed the food supply, and so many others starved in the following weeks.[25]

The new Island legislature passed several bills upon its inception. In 1858, a law was introduced causing any person convicted of selling or giving liquor to Indians to be fined from five to 20 pounds. In 1859, the office of Gold Commissioner was created with wide, sweeping powers. These men granted claims and licenses to miners throughout British Columbia, and could act both as governor and judge in regions lacking any other "imperial authority".[26] Thus, after being at the mercy of Hudson's Bay despots in the outposts, isolated bands were then subject to white law and government at the hands of government officials.

In 1863, a legislature was established on the mainland, paving the way for increased settlement and control of the coast and mountain interiors. The Island and the mainland were united under one government in an act of union in 1866. The laws were assimilated, but the judicial structures remained independent and separate for a period. It would seem that the drafters of the act had overlooked the necessity of specifying that courts were to be amalgamated.[27]

During this period reserves were set aside for some bands in the more populated areas; allotments for each family never exceeded 10 acres, these being inalienable and held jointly. No treaties were signed by these bands. "Consequently, having never been defeated in war, and having never sold any land, the Indians of British Columbia could not understand why white settlers should simply be allowed to take possession of land which the Indians felt they owned by right of occupation and use."[28] This sense of injustice was heightened when it became known later that the new Dominion Government of Canada agreed to pay the British Columbian Government $100,000 a year for the 20 miles of land on each side of the proposed railway, land that had never been purchased from its original and rightful owners.

In 1867, the legislature of British Columbia passed an act entitled An Ordinance for the Taking of Oaths in Certain Cases. A person of Indian ancestry was permitted, upon the discretion of the presiding official, to give evidence in court without the usual oath; it was commonly believed that Indian people were on the whole "uncivilized", and "destitute of the knowledge of God, and any fixed and clear belief in religion".[29]

Indians were merely required to solemnly swear to tell "the truth, the whole truth and nothing but the truth" or an equivalent statement. The wording of this law indicates a rather slanted opinion by the legislators of their Indian "brothers". Furthermore, it suggests that Indian evidence was either spurned prior to this act, or that only Christian Indians were permitted to give evidence in court. Presumably, in either case, an Indian victimized by another person would have considerable difficulty in bringing charges against the offender in court. And yet, this same Indian was speedily tried, and sentenced by this same court, if accused of a crime.

Justice in the days before confederation was indeed a strange beast, a chameleon, changing its colours to suit its purposes. The Indian bands of the coast were rarely aided by this new justice, this foreign law, but rather, were the victims of a capricious and self-serving system. The same people who took their land, who imprisoned and executed their children for vague reasons, who removed all power from the chiefs and Indian nobility, who violated all ancient rights guaranteed a free Indian person, who destroyed traditional justice of the bands, were the same people who promised to protect their red brothers by a strong and impartial law.

Endnotes

1. P. Drucker, Indians of the Northwest Coast (New York: McGraw-Hill Book Co., 1955), p19.

2. ibid, p21; and

   W. Duff, The Indian History of British Columbia, Volume 1, The Impact of White Man (Victoria, Provincial Museum of Natural History and Anthropology, 1964), p54.

3. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ont.: Collier-MacMillan Canada, 1976), p150.

4. W. Duff, The Indian History, p40.

5. ibid, p43.

6. H.H. Bancroft, History of British Columbia, 1792-1887 (San Francisco: The History Co., 1890), p210.

7. ibid, p214.

8. ibid, p49.

9. ibid, p46.

10. A.G. Morice, History of the Northern Interior of British Columbia (Toronto: William Briggs, 1905), p269.

11. ibid, p266-274.

12. ibid, p273.

13. Bancroft, History of British Columbia, p107.

14. ibid, p219.

15. R.J. Surtees, The Original People (Toronto: Holt, Rinehart and Winston of Canada, 1971), p62.

16. Bancroft, History, p299.

17. ibid, p331-334.

18. ibid, p334-335.

19. ibid, 274.

20. ibid.

21. ibid, p340.

22. J.M.S. Careless, Canada, A Story of Challenge (Toronto: Macmillan of Canada, 1963), p218.

23. Bancroft, History, p382 and 420.

24. ibid, p394.

25. ibid, p425-427.

26. ibid, p421.

27. ibid, p423 and 595.

28. Surtees, The Original People, p62.

29. D.G. Smith, Canadian Indians & the Law: Selected Documents, 1663-1977 (Toronto: McClelland & Stewart, 1975), p58.

PART IV - 1867-1960
THE DOMINION OF CANADA OR "WITH GLOWING HEARTS"

The Noose Tightens

The old British tradition of using the law to master aboriginal peoples had its greatest day from Confederation to 1960, particularly west of the Ontario border.

As the tribes signed treaties under extreme duress, the law was wed to the administration of Indian Affairs. The treaties, the law, and Indian Affairs created a system of enforced segregation of Indians from the rest of Canadians. This Canadian version of Apartheid ensured that Indians continued to be locked in a cycle of poverty and impotence on the outskirts of white society.

Before the formation of the Dominion, colonial governments had passed laws concerning Indians on a variety of subjects. Under the British North America Act of 1867, the federal government was given exclusive jurisdiction of Indians and the land set aside for them. Drawing upon colonial laws, Canadian Parliaments passed Indian legislation in 1868, 1869, and 1870. These acts formed much of the content of the comprehensive Indian Acts of 1876 and 1880.

The weighty Act of 1880 remained largely unchanged until major revisions in 1951 and 1960. The Indian Acts became a blight on Indian society.

A few examples selected from the various Acts with regards to Indians illustrates the scope and nature of the early legislation, with particular reference to justice matters.

An Act for the Gradual Enfranchisement of Indians, the Better Management of Indian Affairs...was passed in June, 1869; special provisions were included concerning an Indian sentenced to prison. An Indian inmate lost his annuities and was required to pay all legal costs upon conviction.[1] Presumably failure to pay resulted in prolonged imprisonment due to fine default. This concept was incorporated in the Indian Acts of 1876 and 1880.

The Indian Act of 1880 covered such matters as the definition of an Indian and ways an Indian would cease to be an Indian in the eyes of the government through enfranchisement or marriage. An amendment to the Act in 1918 allowed for the compulsory enfranchisement of Indians by the government; this section (122A) was repealed in 1924 but was later introduced in 1927 as Section 110, in force until 1961.[2]

Clauses in the 1880 Act detailed the procedure to be followed concerning the land and goods of a deceased Indian. The Act specified certain special criminal offences and their punishment: "any person or Indian" (an indicative distinction used often in the Act) trespassing on a reserve to remove or damage an article without license from the Superintendent of Indian Affairs was subject upon conviction to fines, and upon default, imprisonment.[3] Any person selling, exchanging, giving or supplying any Indian in Canada any intoxicant was liable upon conviction to imprisonment

> "for a period not less than one month, not exceeding six months, with or without hard labour, or be fined not less than fifty nor more than three hundred dollars, with costs of prosecution, one moiety (one half) of the fine to go to the informer or prosecutor..." (italics are the author's)

or to both fine and imprisonment.[4] Any "person or Indian" in possession of an intoxicant on a reserve was liable to a fine of between $50 and $100, and imprisonment for default for two to six months. Furthermore, any constable could imprison an intoxicated Indian, "without due process", until he was deemed sober; upon conviction, the Indian could be sentenced to prison for up to one month, and for a further 14 days if he refused to say how he procured the alcohol.[5]

The Indian Act's most controversial prohibitions were against the Potlatch and Sundance.

> "Every Indian or other person who engaged in, or assists in celebrating, or encourages either directly or indirectly another to celebrate any indian festival, dance or other ceremony, in which goods or articles of any sort forms a part or is a feature (the Potlatch)...and every Indian or other person who engages or assists in any celebration or dance in which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature (the Sundance) is guilty of an indictable offence and is liable to imprisonment for a term not exceeding six months and not less than two months."[6] (italics are the author's)

These ceremonies were the core of plains and west coast society. Their prohibition had far-reaching consequences which will be discussed in the upcoming sections in detail. At this point, it is enough to say that the prohibition was used in an attempt to destroy significant Indian cultural, religious, and political ceremonies and procedures. It considerably increased the anger and disgust of Indian people towards white men's laws and their enforcers.

Section 141, an amendment to the Indian Act in 1927, prohibited requesting, obtaining, or receiving funds from any Indian in pursuit of any Indian claim; to do so was to be guilty of a summary offence and liable to pay between $50 and $200 or to imprisonment for not more than two months. This section, together with Section 140 concerning trespassing, were used by Indian Affairs and law enforcement agencies to inhibit or prevent political organizing among and between bands.[7]

Indian Affairs legislation laid out the ground rules for the systematic takeover by Canada of the Indian nations, investing all power in the hands of the Indian Agent.

For example, the Agent was given the rights and duties of the legal equivalent of two ex-officio Justices of the Peace under the 1895 amendments to the Indian Act.[8] The Agent could thus try a summary case on his own authority, and hold preliminary investigations for serious cases, and indeed, was encouraged to do so. In his general instructions to all Indian Agents in 1913, Duncan Scott, the Deputy Superintendent General of Indian Affairs noted:

> "Any Indian Agent is, of course, competent to try any case of infraction of the sections of the Indian Act regarding the liquor traffic within the territorial limits....It is considered that, where the penalty sections provide therefor, imprisonment without the option of a fine would be a greater deterrent than the imposition of a fine alone. In some cases, where there is provision therefor, it might be advisable to inflict both fine and imprisonment. It may be remarked that the Department has no objection to Agents or other outside officers of the Department acting as informers in cases of prosecutions under the Indian Act, nor to their receiving the moiety of the fine allowed the informer in successful cases."[9]

The Indian bands, then, were at the mercy of the Indian Agent, who had the potential to be a despot. The Agent's "clients" were unable to exert any political influence; they did not have the right to vote in Federal and in most Provincial elections unless they gave up their Indian status, a process known as enfranchisement. Nor were Indian people of sufficient financial importance to be able to make their case heard in Ottawa.

Authority was clearly invested in the Indian Agent by Parliament. The Agent could prevent an Indian from leaving or entering a reserve under his supervision by simply refusing to supply the necessary passes. He "could jail Indians who showed signs of disrespect."[10] The Agent's permission was required before an Indian could sell produce, or even slaughter personal cattle for food. The treaty money distributed annually could be withheld by the Agent because of some infraction of a white moral law, regulation, or judicial law.

For example, the Indian Agent for the Blood Reserve in Alberta stopped treaty payments to the band around 1910; he was worried about Indian husbands and wives separating and "forming illicit relations with other Indian men and women." After attempting other unspecified approaches to end this practice which was traditionally perfectly acceptable to the band — the Agent, Mr. Hyde, stopped payment under the authority of the Indian Act.[11]

Such a system was ripe for abuse, and legal authority was often used for purposes of personal advancement and profit. "Government agents were no wiser in their turn, for many of them were small men who owed their position to political patronage alone, who used the law to become despots in their own areas."[12]

Police were partners in this scheme, particularly the Royal Canadian Mounted Police, or Northwest Mounted Police, as they were earlier termed. The police had the unpopular task of moving Indian bands onto reserves and keeping them there. They were saddled with the responsibility of quelling rebellions or pockets of resistance to the government's policies and the devastating circumstances that the aboriginal people were faced with. The police were called upon to investigate and maintain surveillance on Indian leaders and activists, activities often seen as outright harassment.

Indian political organizers in 1900s such as Loft, Lawrence Two-Axe, Hamilton and Jules Sioui, were under active investigation and interference by the police.[13] The government-backed elective system was often imposed on traditional Indian political structures by the police.

The Canadian government's policy involved "encouraging" bands to adopt an elective system of local government. In the Indian Act of 1876, the Governor-in-Council was given the power to order elections of chiefs on any reserve, "provided always, that all life chiefs now living shall continue as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance, immorality, or incompetency."[14]

The Governor could remove hereditary chiefs on his own judgment of their capabilities. The elective system was officially favoured as it was seen to represent progress. There is evidence that government officials often found the new, elected chiefs more amenable to persuasion, and indeed, even supported particular candidates.

Under the Canadian elective system, chiefs could represent the people without needing the total support required by most traditional Indian governments as only a simple majority of those who actually voted was needed. Some of the elected chiefs did not qualify for their positions by traditional practice, and did not have the full support of their people.[15]

The conflict between the Iroquois and the Canadian government over the imposition of the elective system is an apt example of Indian opposition and government methods.

The Iroquois were a thorn in the government's side. The British Crown owed much of its military success over the French and Americans to the Six Nations. The British had also agreed to respect the strong and ancient confederacy founded upon a constitution; this promise had been symbolized in the Belt of Law.

With the birth of the Dominion of Canada, the white authorities had no further need of support from the confederacy; the federal government believed that it could not afford in its own interest to allow the Iroquois to exist as a sovereign nation, despite the essence of the previous agreement.

In 1888, the Bay of Quinte Six Nations Mohawks voted, by a substantial majority, to continue with their ancient system of hereditary chiefs. They petitioned the government, noting that under the Indian Advancement Act of 1884 the voting majority was to hold sway, and asked the government to respect their decision. When they received a negative reply, the chiefs recalled in a further petition the agreement that "the British will remain in its own vessel, and the Indian in his birch bark canoe", that "the British will never make any compulsory laws for the Six Nations...[16] Their petitions were rejected.

Matters began to come to a climax. The Iroquois reserves of Caughnawaga, Oka, and St. Regis uttered similar desires, some calling for the reuniting of the old confederacy. The Superintendent-General of Indian Affairs wrote to the Governor General that acquiescence to the Iroquois would

> "furnish a very undesirable precedent, and would likely be regarded by the Indians and other sections of the country as a confession that the Department of Indian Affairs had found that the form of government and the system of laws of the Indians themselves were more in their interests than those which had been framed by parliament."[17]

The Clan mothers of St. Regis again tried to make their voice heard by the bureaucracy. They explained the workings of the traditional system, and the safeguards against abuse that it contained. When the government failed to respond, the clan mothers proceeded to select and confirm the chiefs under the old Iroquois constitution, and informed Ottawa of their actions.

The Department quickly responded, briefing the local Indian Agent: "The Department is determined not to allow any of the Indians to set its authority at defiance."[18]

Elections were called and blocked twice. The band was threatened with having interest money cut off, and that the Department warned that it would run the reserve if the Indians pursued their course. An election was called again, and led to open confrontation. The Dominion police fled in the face of a large group of reserve members who refused to allow the election to take place and the Indian Agent was detained, but not injured.

The following spring, "a messenger went to the homes of the Life Chiefs to say that there were some men at the Agent's office to interview workmen, and to see the chiefs about buying stone to rebuild the collapsed piers of the Cornwall Bridge."[19]

The first three chiefs to arrive walked into a room full of Dominion police, and were immediately seized and manacled. Jake Ice, the brother of one of the captives, rushed in to the hall to free his brother and was fatally shot. The remaining chiefs in custody were taken away, and warrants issued for the other traditional chiefs. Seven chiefs voluntarily surrendered and were imprisoned. Some were later released on bail, but all Life Chiefs were held without trial for a year. The remaining chiefs were finally released on their own recognizance and informed that they would have to pay for their own prosecution and defence.

Fifteen men were tried, and released after being issued with potent warnings not to interfere with the elections again. The Dominion Police Inspector gathered a small group of Iroquois together and staged an election. "Rest well, Indians of St. Regis. Democracy has arrived,"[20] the Indian historian who recorded these events bitterly noted. So much for the promises of the white man.

The Iroquois did not accept defeat lightly and continued to make their stand known publicly to the government. During the debates concerning the question of allowing Indians to vote in Canadian elections, the hereditary chiefs and their supporters, the so-called "conservatives," denounced the franchise. By voting for a government of Canada, Indians would be recognizing the lawful jurisdiction of a foreign power over the bands, they warned: if Indians were to vote the concept of a Sovereign Indian state would receive a death blow.[21]

In 1920, the RCMP allegedly seized the wampum belts recording the Iroquois constitution dating back to 1450.[22] They have never been recovered, and are desperately missed. The disappearance of the Iroquois constitution was as devastating as the disappearance of the only copy of the British North America Act would be to the government of Canada.

The Iroquois were not the only Indian people to fight for their rights under long-standing agreements with their white "brothers." Jules Sioui, a hereditary Huron chief of the Tweiwei line, fought for all Indian people amidst a furore of suspicion and interference.

> "He came onto the scene in 1943, after the government had frauduously passed a law compelling the Indians to enrol for the war. This was passively felt by most Indians as a violent encroachment on their rights, but Jules Sioui, in a pamphlet titled 'War and Peace', denounced this deed as the most dishonouring renegating of its own word ever committed by the government. For, he felt, how could the government, which had immensely gained at the signature of treaties, come back on its own word, while the Indian, who had immensely lost at such signature, never attempted to come back on his word? 'My life may be left in the course, but no one will touch the Right of the Indian', were Jules' words.
>
> "In 1942, he organized the first Indian convention on a national scale, which

was attended by fifty chiefs coming from Nova Scotia to British Columbia, who came to Ottawa by their own means in spite of the Department of Indian Affairs' advice not to attend. That assembly of Chiefs elected the executive council of the North American Indian Nation Government...

"The government raised an imposing amount of discredit against Jules Sioui. They used every means to disparage and blacken him: false accusations, attacks on his private life, threats of enfranchisement, denial of his Indian nationality; but nothing ever stopped him from organizing his annual conventions.

"He was finally arrested in 1950 and charged with seditious conspiracy for producing and distributing cards of membership of the North American Indian Nation Government. He liberated himself through his oratory powers. His concluding speech lasted four hours. One moved crown attorney came to congratulate him after the judges gave their verdict, saying: 'Jules, I have been practising law for eighteen years and I have never heard a man talk like you have.' Not extending his hand to the one expecting it, Sioui replied: 'That you are surprised means that you haven't learned honesty on your mother's knee'.

"However, the federal government launched an appeal against the decision. It is then that Jules declared the hunger strike that was to be the longest ever recorded in human history. He fasted for seventy-two (72) days, at the end of which all but his wife thought him dead.

"Five years later, as he started recovering the use of his legs, Jules undertook to organize more national annual conventions, thereafter unimpeached by the government, until he got arrested again in 1963 for having taken down election lists that had been posted on the reservation. This was seen by Jules Sioui as illegal and another covered threat to steal the Indians of their rights and status.

"By that time, the Department of Indian Affairs had appointed a new, well-bribed band council, which never made a move in the defense of the patriot Sioui. He was kept in jail eleven months before obtaining a trial. During this long term, the government had ample time to undermine the basis of the unique work of his life. He was sent back to the reserve where his wife had seen their meagre belongings confiscated and his documents pillaged by the police. She had also had to sell their house...

"Throughout the country and beyond the borders, Jules is known to be an uncompromising defender of the cause of Justice and for this, he is to be ranked with the great universal patriots; for Justice is the breath of mankind."[23]

The only hope that many Indians harboured to rectify the abuse and conditions invoked by the Canadian government was to obtain the vote without loss of aboriginal rights or Indian status, and thus to exert political influence.

Without this, the Indian nations were completely at the mercy of the Indian Affairs Department, Canadian law and its enforcers. The Indian and Métis wanted a fair deal. Political organizations began to form, and other support groups joined their cries for justice. The evolution of these movements will be traced in later chapters.

The politicization of Indian and Métis people resulted in an investigation of Indian Affairs by Parliament in 1946-48. In 1951, the clauses banning traditional ceremonies and practices were lifted through revisions to the Indian Act. Full provincial franchise was obtained in 1949 in British Columbia and Newfoundland; 1952 in Manitoba; 1954 in Ontario; 1960 in Saskatchewan and the Yukon; 1963 in Prince Edward Island and New Brunswick; and, 1965 in Alberta. Nova Scotia and the Northwest Territories had always allowed Indians to vote in their elections.[24]

In 1960, Indians won the right to vote federally, unconditionally. Up until this time, an Indian had to renounce his legal Indian nationality and all treaty and aboriginal rights if he wished to have the right to vote for the governments which dominated his or her people. With the gain of an unconditional federal franchise, the indigenous people of Canada obtained a new status: that of an electorate.

Other positive changes were ushered in during the mid-20th century. The development of educational policy led to an improved standard of education, with a few Indians managing to obtain university education. A new generation emerged who could express the history and experience of the Indian populace in a language and style that their oppressors could understand. Migration into the urban areas helped to break down ancient tribal rivalries, and spur the development of Indian and Métis political organizing.

The sudden, direct contact in the 1940s and '50s between the white and Indian awakened many people to the plight of the indigenous population and their quest to rectify their status as "outcasts."

The Dark Ages for the Indians of Canada were beginning to fade. And yet, the seeds had been sown over the decades and the poisonous harvest was just beginning to be reaped. Although dark faces had been a common sight in Canada's jails, it became obvious in the late 40s and early 50s that Indians and Métis were becoming inmates in crisis proportions. A new disaster for people of Indian ancestry was surfacing.

Endnotes

1. D.G. Smith, Canadian Indians & the Law: Selected Documents, 1963-1977 (Toronto: McClelland & Stewart, 1975), p75.

2. Don Whiteside (sin a paw), Efforts to Develop Aboriginal Political Associations in Canada, 1850-1965 (Ottawa: Aboriginal Institute of Canada, 1974, First Draft), p29.

3. Smith, Canadian Indians, p125.

4. ibid, p142.

5. ibid, p144.

6. Edward Ahenakew, Voices of the Plains Cree (Toronto: McClelland & Stewart, 1973), 1973, p182.

7. Whiteside, Efforts to Develop, p14.

8. R.J. Surtees, The Original People (Toronto: Holt, Rinehart and Winston of Canada, 1971), p79.

9. Duncan C. Scott, Deputy Superintendent General of Indian Affairs, General Instructions to Indian Agents in Canada, Oct. 25, 1913 (Matheson's Blue Book, Canadian Archives, RG10, Volume 10020).

10. Whiteside, Efforts to Develop, p72.

11. Letter, Nov. 6, 1913, (Matheson's Blue Book, Canadian Archives, RG10, Volume 10030),

12. Ahenakew, Voices of, p106.

13. Whiteside, Efforts to Develop.

14. Smith, Canadian Indians, p105.

15. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills, Ont.: Collier-Macmillan Canada, 1976), p110.

16. Rarihokwats, How Democracy Came to St. Regis (available through Akwesasne Notes, Mohawk Nation, via Rooseveltown, N.Y., 13683).

17. ibid, p8.

18. ibid, p11.

19. ibid, p14.

20. ibid, p18.

21. H.B. Hawthorne, ed., A Survey of the Contemporary Indians of Canada (Ottawa: Queen's Printer, 1967), Part I, p260.

22. Micmac News (Sydney, Nova Scotia: the Union of Nova Scotia Indians, March 1972).

23. G. Tsiewei Attsistahonra, Jules Sioui, Universal Patriot (Unpublished, June 1978).

24. Hawthorne, ed. A Survey, Part I, p262.

The Métis: Rebellion or Resistance?

As a people at home in both Indian and white cultures and languages, as the buffer between European and Indian territory, the Métis received the vanguard of foreign government and its laws in the Prairies.

Wherever the Métis retreated to, they were hounded by white "civilization;" their ways and their democratic approach to organizing and controlling themselves were repeatedly prohibited by white might or legislation. The free spirit of the Métis, like their Indian brothers, could not willingly be subjected to, or ruled by, a remote people and alien principles.

The Provisional Government of 1869-1870

In the 1860s the Métis informally assumed the political role that the weak Hudson's Bay Company had lost. The meaning of self-rule was becoming understood and enjoyed by the Red River Métis. Suddenly, the Company sold its rights to the Northwest Territories (which included the Prairies in this period) in 1869 to Canada for 300,000 pounds.[1] No discussions were held in the colony; even an announcement about the negotiations or transfer was notably absent. The Métis — and many others in the colony — were enraged.

The Rupert's Land Act of 1868 stated that the old regime would remain in force until the Dominion of Canada assumed jurisdiction on December 1, 1869[2]. The agreement needed ratification by the Queen. The whole transfer was fraught with uncertainty; for many months a vacuum of administration and government existed in the District of the Assiniboine. Matters quickly deteriorated.

William McDougall was appointed as the Governor of the area by the Canadian government on September 28, 1869, with clear instructions that he was not to assume any governmental responsibilities in the area until the transfer was proclaimed by the Queen. Despite these orders, McDougall wrote a proclamation appointing himself as Lieutenant Governor, to which he forged the Queen's signature. In addition, he "organized an armed force within the Territory of the Hudson's Bay Company, without warrant or instructions."[3]

McDougall continued to act in an oppressive manner and drew others into his web. On November 24, 1869 a Provisional government was created in the District of the Assiniboine, with John Bruce as president, and Louis Riel as Secretary. In their Declaration of the People of Rupert's Land and the Northwest on December 8, 1869 the provisional government stated:

> "Whereas, it is admitted by all men, as a fundamental principle, that the public authority commands the obedience and respect of its subject. It is also admitted,

that a people, when it has no Government, is free to adopt one form of Government, in preference to another, to give or to refuse allegiance to that which is proposed....And, whereas, it is also generally admitted that a people is at liberty to establish any form of government it may consider suited to its wants, as soon as the power to which it was subject abandons it, or attempts to subjugate it, without its consent to a foreign power; and maintain that no right can be transferred to such foreign power.[4]

There were many, and differing, opinions about the legality of a provisional government largely established by the Métis, the majority of the colony. Those outside the colony agreed that the temporary local government had no right "to exercise jurisdiction over offenders in Criminal Cases, to levy taxes compulsorily."[5]

The provisional government quickly issued declarations, demands, and passed legislation. It issued a Bill of Rights in 1869 and demanded its implementation if the peoples of Assiniboia were to agree to join Confederation. The local government demanded equal status to other provinces, bilingual administration of government and justice, Indian treaties, assurance that all local customs and structures would be respected, and a guarantee against reprisals.[6]

The most damaging act of the Provisional Government was the execution of Thomas Scott, a volatile and venomous Protestant, for high treason. This execution would cost the Métis, and Riel in particular, dearly.

A convention of local people sent delegates to Ottawa to negotiate a settlement agreeable to both sides. These emissaries were arrested on the authority of an Ontario provincial warrant accusing them of complicity in the "murder" of Scott. Ontario was then dominated by Orangemen, an organization of militant Protestants.

> "Horrified, the Dominion Government intervened before they had been summoned to 'trial' before a local police magistrate who had to be convinced by a Dominion judge that he had no jurisdiction over an alleged capital crime eight hundred miles away."[7]

The Manitoba Act of 1879 created the Province of Manitoba out of Rupert's Land or the Assiniboia District. The local assembly agreed to the terms of the Act and entered into Confederation in June.

Eight hundred volunteers, many of them Orangemen, accompanied Colonel Wolseley on his Red River Expedition. This large force was sent officially as peacekeepers but were seen by the Métis as an occupation force. The provisional government collapsed on August 23, and Riel fled. Five years passed before the promised amnesty for the Métis leaders was forthcoming, and Riel was banished for five years.

The short-lived legislature in the Assiniboia District was partially successful in its ends in that a province was carved out of the plains founded upon the principles the Métis espoused.

However, the Orangemen launched a vendetta against the Métis. Ontario offered a reward of $5,000 for the men responsible for Scott's death. The leaders of the "rebellion" and those involved in the trial and execution of Scott were beaten, pursued, and even murdered by Wolsey's soldiers. On September 13, 1870, Elzear Goulet, a member of the court martial that sentenced Scott, was attacked by a group of soldiers, and purposefully drowned. Subsequently, two of his murderers were identified by two magistrates investigating the case. "As in all the other cases the authorities considered it unwise to proceed with prosecution of the criminals, for fear of creating still greater unrest."[8] Other Métis were traced and either killed or left for dead.[9]

Systematic raids of prominent Métis homes were commonplace and property was destroyed and women harassed. The offices of the Manitoban and Le Métis newspapers were ransacked, and the editor of The New National was brutally beaten. Leoine, who had been an active member of the provisional government, was sentenced to hang and was only saved by a reduction to a two-year sentence by the Governor General of Canada.[10]

The victory of Riel and the Métis was a short, bitter one. In the face of such persecution, the Métis dispersed. Many migrated to Saskatchewan to re-establish the traditional life of the Métis. Law and order of a British brand was firmly established in Manitoba, and would seek out the Métis again. It was clear that the only people who would protect the rights of the Métis were the Métis themselves.

The Provisional Government of 1873-1875

In the spring of 1870, around 40 Métis families left the Red River Colony and made their way to the southern Saskatchewan River to establish a new settlement. Gradually, others joined this group, led by Gabriel Dumont.[11] With increased numbers came greater disruptions to the peace of the community. On December 10, 1873 an assembly was held at St. Laurent, the winter camp of the Métis on the Saskatchewan.

> "In the absence of any form of government among them to administer justice and to judge the differences that may arise among them, they have thought it necessary to choose from among their numbers a chief and councillors invested with power to judge differences and to decide litigious questions and matters affecting the public interest."[12]

At this meeting it was stated clearly that all were:

> "loyal and faithful subjects of Canada, and are ready to abandon their own organization and to submit to the laws of the Dominion as soon as Canada shall have established amongst them regular magistrates with a force sufficient to uphold in the country the authority of the law."[13]

Furthermore, all participating in this new association did so voluntarily.

Over a period of months, the council passed legislation dealing with the administration of justice, including a definite statement that there could be no outside source of appeal for those who submitted a case for trial. Seduction, defamation of character, arson, damage to property and person, and general supervision of the community were considered by the council.

In addition, the regulations to the Métis buffalo hunts that had been in effect for years were formalized. All offences were punished by some kind of fine, either specified by law, or for some serious offences, according to damage caused. The use of force when a person refused to present himself at the hearing or accompany the soldiers, were the only exceptions to the approach of fines.

All was reasonably calm until the Northwest Mounted Police (NWMP) appeared on the plains in 1874-75. Governor Morris of Manitoba, also responsible for the Territories, remarked to the Minister of Justice that "the matter was nearly up for legislative action.[14] French, of the NWMP, telegraphed the Minister as well, stating that the accounts by the Hudson's Bay Company were exaggerated and that the regulations passed by the Métis under the circumstances were "absolutely indispensable and invariably enforced in the parts of the North West...[15] He viewed the Métis as law-abiding people, and "respectfully recommend(ed) that no further action be taken against Dumont or others, if they make good the fines and losses which they have inflicted on persons outside of their organization."[16]

It was the issue of Métis enforcement of their laws against outsiders that forced the hand of the NWMP, and brought an end to the formal justice of the Métis.

A complaint was laid by Peter Balleudieurs that his camp had been plundered by Métis soldiers. Fifty mounted police rode to St. Laurent to end the self-styled government and arrest Dumont. The official records do not say whether Dumont was in fact arrested, but it is clear that the government, and many Métis, were dispersed shortly after this incident.

The Northwest Rebellion, 1885

The Métis of Saskatchewan and many Indians of the Northwest joined forces for the last battle for independence in the Prairies; their cause was the same, as was their enemy. (The Indian involvement in the uprising will be dealt with separately in the following chapter).

The Métis petitioned the government for nine years, along with the English settlers of the region, requesting guarantee of title to the land they were occupying. They feared a repeat of the Red River problems. None of their petitions were answered despite warnings from the NWMP and the Lieutenant-Governor of Manitoba of grave consequences if Métis concerns were ignored.[17] Anyone could, and did, trespass on Métis farms to steal timber or their valuables without fear of punishment. A Métis, however, was quickly punished if he took a small article from a Hudson's Bay store.

There were other grievances, including the number of government - appointed nominees in the council responsible for the Northwest, the management of public lands, and the lack of attention by government to petitions on local matters.[18] The unannounced arrival of surveyors in the region lit the fuse.

In 1884, Riel was asked to return to the northwest by some Métis, after years of exile in the United States, to help organize a defence of Métis rights. A provisional government was again established on March 19, 1885. A Bill of Rights was drawn up asking for, among other things, provincial status, land grants, and better provisions for the Indians of the region.[19] This met with a contemptuous response from the Canadian government.

Although the Mounted Police sympathized with the Métis, they were prepared for the outbreak of violence. In fact, they had Riel and the other Métis leaders under surveillance for a number of years.[20]

The NWMP were involved in the first outbreak of the rebellion. The Battle of Duck

Lake on March 26 left 12 police officers dead and many wounded whereas the Métis and Cree losses were light. The conflict quickly escalated as the involvement of Indians in the region increased dramatically in such incidents as Battleford, Fort Pitt and Frog Lake.

Eight thousand men, under the command of General Middleton, armed with cannon and Gatling guns were sent to Saskatchewan by the Canadian government . The Métis were defeated in the Battle of Batoche. Three hundred and fifty Métis from 14 to 93 years of age dug in for the defence. After four days of fighting, 51 Métis lay dead, with 173 injured; of the thousands of soldiers, only eight were killed and 46 wounded.[21]

The Métis were violently routed for defending their right to be heard, their right to land that they had tamed, and their right to just treatment by the Canadian government and its institutions. The police were certainly unpopular with the Métis for their role in putting down the provisional government, but feelings of hatred were fully aroused in the aftermath of the Battle of Batoche. What followed the defeat of the Métis was a travesty of justice.

Those who could, fled, including Gabriel Dumont. He managed to reach the United States, where he and others were greeted as political refugees. More than 70 Métis and Indians were arrested; fewer than half came to trial. Eighteen Métis were convicted of treason-felony and sentenced from one to seven years in prison.[22] Will Jackson, Riel's aide, was found not guilty by reason of insanity, despite his vehement protests to the contrary. The trials themselves, at which the defendants pleaded not guilty, were incomprehensible to many of the accused. The trials were conducted in legalistic English and Latin, almost impossible to translate into Cree or French.[23] During the trials, Middleton's soldiers looted, burned homes, and destroyed Métis property. The NWMP was responsible for bringing the "rebels to trial, and harassing those suspected of having participated in the rebellion." During and after the Saskatchewan Rebellion of 1885, any warm feeling that may have existed between the NWMP and the Métis, and most of the Indian population, ceased.[24]

Riel's trial was the most public event of the Métis struggle, and received international attention. "There can be little question that the circumstances of Louis Riel's trial were immoral. Whether the trial itself was also illegal has been debated even since it was held."[25] None of the Métis, neither those who were prisoners, nor any of the men who had escaped, were called as witnesses.[26] In order to bring Riel to trial an information had to be laid; the complainant who laid charges against Riel was Alexander Stewart, Chief of Police in Hamilton, Ontario which is to say the least, unusual, if not extraordinary.[27]

The jurors were all Protestant Anglo-Saxons, an extreme disadvantage for the the Roman Catholic, French-speaking Riel at this trial for his life. One of these jurors, 50 years later, stated publicly that "We tried Riel for treason, and he was hanged for the murder of Scott.[28] The execution of Riel appeared to Métis, Indian, and Frenchman alike as revenge by the Orangemen of Ontario. Others said it was treachery, pointing accusing fingers at the Canadian government; Canada appeared to have contributed to the violent nature of the rebellion through employing a Métis named Charles Nolin.[29] It appeared that the Canadian government was looking for an excuse for an armed takeover of the elusive plains so appealing to the Americans.

Riel became a martyr symbolizing the struggle of a people for political, economic, and legal rights. The execution of Riel merely confirmed the worst suspicions of the participants and sympathizers of the provisional government of 1885.

The stature of Canada's justice system in the eyes of the Métis would never recover from the events of this last stand. The repercussions caused by a group of Métis presenting their complaints in a strong voice was unjust, and outrageous in its proportions. The Northwest Mounted Police were seen as the arm of English, Protestant ambition in its attempts to establish British law, and British profit in the Prairies.

The Métis, who for almost a century had attempted to establish control over their own lives and destiny, were truly defeated by the 1885 Rebellion. For 50 years, they drifted on the periphery of Canadian society. Some became assimilated, denying their heritage out of fear or shame. A few maintained farms and carved out a marginal existence. Many continued to live in Métis colonies, in poverty, clinging to their traditions and stories of their brave undertakings. Others lived in shanty towns on the edges of white communities, not only physically barred from the mainstream of Canadian life, but emotionally rejected.

Poverty, and grief took their toll. Alcohol was consumed in quick, large doses, leading to confrontations with the law. Imprisonment was also common for Métis hunting out of season, or in prohibited areas, often destroying the only opportunity of self-support.

> "The Law will do many things to see that justice is done. Your poverty, your family, the circumstances, none of it matters. The important thing is that a man broke a law. He has a choice, and shouldn't break that law again. Instead he can go on relief and become a living shell, to be scorned and ridiculed even more."[30]

Bitterness grew, as did despondency. "For many of them, the world was a cesspool of unemployment, social ostracism by Whites, spiritual and physical degradation, hunger, long-term malnutrition, disease and squalor.[31]

The fighting spirit of the Métis proved hard to kill. The Métis of the plains thrived on their history which became a source of pride and strength. L'Union National Métisse St. Joseph de Manitoba, originally founded in 1887 as an historical organization, did much to promote the Métis' sense of pride in their traditions and stands. This group identity was particularly strong in Saskatchewan, where a Métis society was formed for political pressure and solidarity in 1937.

Unemployment, hunger, rude shelters, discrimination, police harassment, and imprisonment were the gifts of the 20th century to the Métis riders of the plains. They were the penalties the Métis paid for protecting their self-respect, lands, traditions, and government; for denying a foreign power.

Endnotes

1. G.F.G. Stanley, Manitoba 1870: A Métis Achievement (Winnipeg: University of Winnipeg Press, 1972), p18.

2. E.H. Oliver, The Canadian Northwest: Its Early Development and Legislative Records (Ottawa: Government Printing Bureau, 1914), Volume II, p84-8.

3. ibid, p909.

4. ibid, p904-5.

5. ibid, p877.

6. C.P. Mulvaney, The North-West Rebellion of 1885 (Toronto: A.H. Hovey & Co., 1885), p27.

7. Joseph H. Kinsey, Strange Empire - The Story of Louis Riel (Toronto: Swan Publishing Co., 1965), p169.

8. D. Bruce Sealey, and Antoine S. Lussier, The Métis: Canada's Forgotten People (Winnipeg: Manitoba Métis Federation Press, 1975), p93.

9. Kinsey, Strange Empire, p185.

10. ibid, p212.

11. ibid, p263-4.

12. Laws and Regulations Established for the Colony of St. Laurent on the Saskatchewan, Dec. 10, 1873 (Canadian Archives, Ottawa, RG18, Volume 6, file 333).

13. ibid.

14. Letter from Morris to Minister of Justice, Ottawa, from Fort Garry, Manitoba, Sept. 16, 1875 (Cnadian Archives, Ottawa, RG18, Volume 6).

15. Letter to Minister of Justice from Commissioner French on Sept. 14, 1875 (Canadian Archives, Ottawa, RG18, Volume 6, file 333).

16. ibid.

17. T.M.Longstreth, The Sillent Force: Scenes from the Life of the Mounted Police of Canada (New York: The Centry Co., 1927), p.136.

18. Mulvaney, The North-West, p33.

19. ibid, p28.

20. R.C. MacLeod, The NWMP and Law Enforcement, 1873-1905 (Toronto: University of Toronto Press, 1976), p102.

21. J.G. Donkin, Trooper and Redskin in the Far North-West; Recollections of Life in the North-West Mounted Police, Canada, 1884-1888 (London: Simpson Law, Marston, Searle & Rivington, 1889), p144.

22. Sealey and Lussier, The Métis, p130.

23. Howard Adams, Prison of Grass (Toronto: New Press, 1975), p112.

24. Lorne Brown, and Caroline Brown, An Unauthorized History of the RCMP (Toronto: James Lewis & Sammuel, 1973), p21.

25. Kinsey, Strange Empire, p428.

26. Adams, Prison of Grass, p129.

27. Kinsey, Strange Empire, p425.

28. H. Bowsfield, Louis Riel: Rebel of the Western Frontier or Victim of Politics and Prejudice? (Toronto: Copp Clark Pub. Co., 1969), p191.

29. Adams, Prison of Grass.

30. Maria Campbell, Halfbreed (Toronto: McClelland & Stewart, 1973), p54-5.

31. Sealey and Lussier, The Métis, p145.

Prairie Indians and White Law

The founding of the Dominion of Canada in the east created shock waves on the plains. Within four years a series of treaties between the Queen and the Prairie tribes had been signed; by 1878, almost the whole territory had passed into the hands of Ottawa.

These were hard times for the plains people; disease, whisky, and war had reduced their numbers and weakened their spirits. The buffalo, that noble beast which had once been 70 million strong, was becoming scarce, and mass starvation struck the final blow upon most bands. Settlers were swarming into the fertile belts, usurping the lands of the beleaguered tribes. It was under these circumstances that government representatives came to bargain.

The negotiations were swift when one considers the scale of the transactions involved. In two or three days of discussions, vast tracts were ceded to the Crown (in effect, to Canada) for blankets, rations, free medical supplies, annual cash payments of a few dollars, and medals for the chiefs. According to witnesses of the Prairie treaties, there was very little choice for the tribes. Threats, starvation, and promises of protection forced the harassed plains Indians into agreements they would soon regret.

More than a few Indians noted with horror the aggressive greed of their white neighbours. A Cree named the Gambler stated during Treaty 4 negotiations: "The Company have stolen our land. I heard that at first. I hear it is true. The Queen's messengers never came here, and now I see the soldiers, the settlers, and the policemen.[1] David Lairds, the Treaty 8 Commissioner, informed the assembled chiefs that they were free to make treaty or not, but the laws would be obeyed in either case.[2] At the signing of the Blackfoot treaty in 1877, Chief Button indicated the heavy pressure upon the chiefs to treat: "I cannot make new laws. I will sign."[3]

For some tribes the situation was desperate. For many Indians the only hope of survival lay in the white offer of rations, medical help and blankets in exchange for their ancestral hunting grounds. Chief Sweetgrass of the Saskatchewan Cree petitioned the Canadian government in 1870 to "make provision for us against the years of starvation (when drafting treaty plans). We have had great starvation in the past winter, and the Smallpox took away many of our people, the old, young and children."[4] (italics are the author's).

Many chiefs had concerns about the sincerity of the government in seeking these treaties. One chief queried, pen poised over the treaty document, "should I see that there is anything wanting, through negligence of the people that have to see after these things, I trust it will be in my power to put them in prison."[5] He was told not to worry.

Government treachery became immediately apparent. After the buffalo disappeared in 1879, the tribes starved and perished during the harsh winter. In this destitution, most bands were "helped" onto their little parcel of land by the Northwest Mounted Police. Many Indians were outraged at the conditions in which they were forced to live. The promised aid trickled in. Starvation became so severe that nearly 5,000 Indians camped in front of Fort MacLeod's gates, hoping that the police would provide enough food for the day.[6] Some bands flatly refused to be herded onto reserves; Chief Yellow Calf and several other members of his band decided to remain free. For two months this handful of Indians resisted police attempts to move them onto their reserve. Additional troops finally crushed the resistance, and the inevitable move occurred, under force.[7]

Discontent boiled. In the spring of 1884, conditions were so deplorable on the reserves that Chief Poundmaker of the Cree called together the Indians of the northwest in a great assembly.

> "He claimed that Indians realized they had made a serious mistake in agreeing to treaties with the Federal Government. Superintendent Crozier of the Mounted Police attempted to arrest the Indian chiefs for assembling, but they were so desperate that they denied Crozier's authority."[8]

Despite this forewarning, the government maintained a deaf ear to these legitimate complaints.

In 1885, the northwest erupted in the throws of the last rebellion against the usurpers of the plains. The Indians who participated in the Northwest Rebellion were embittered and enraged. They had been deceived and starved into submission. They were mistreated, often brutally, by their new "neighbours".

In settlements such as Frog Lake where Indian resentment flared into violence during the rebellion, white actions had been particularly malicious. Both the local Hudson's Bay Company factor and the area minister agreed that whites "ill-treated these poor people in a most brutal manner. They kicked them, beat them, and cursed them in a most revolting fashion."[9] It was here that Wandering Spirit and a few other Cree men killed the Indian Agent, farm instructor, and two priests in the event known as the Frog Lake Massacre.[10]

Ironically, the hesitancy and outright refusal of many Indian leaders to become involved in the rebellion, despite good cause, prevented an initial sweeping victory of the Indian and Métis resisters. (The indigenous population of the plains considerably outnumbered the Europeans at this time). The actions of a small number of bands brought the full wrath of Ottawa down on the heads of the plains tribes.

As the Métis were being besieged and defeated at Batoche, Poundmaker and his

Cree warriors captured 30 wagons of supplies intended for the troops and police, taking 22 prisoners. His victory was short-lived. Hearing of the defeat of Riel's forces, Poundmaker and his band rode into Battleford and surrendered their weapons.[11] Meanwhile, Big Bear, the leader of many young Indian men angered by the treaty deception and imprisonment on reserves, had surrounded Fort Pitt. Their demand for food and clothing was refused by the fort's occupants. A siege was prepared, but the police and civilians vacated the fort under the blanket of night. Big Bear and his band entered in the morning to find the fort empty.[12] With the surrender of Poundmaker, all forces were directed towards Big Bear, who escaped into the uncharted wilderness. Within a few days he was captured and the battle was declared over.

Poundmaker, Big Bear and One Arrow were all tried and sentenced to three years in Stoney Mountain Penitentiary in Manitoba. (Anyone who received a sentence of more than 12 months served his term in the Manitoba penitentiary; sentences under a year were served in the Regina gaol.[13]) Poundmaker slumped visibly at the trial upon hearing his sentence and said: "I would rather prefer to be hung at once than to be in that place."[14] Poundmaker and Big Bear were released in 1887, but both died in despair shortly thereafter.

Between 28 and 30 Indians were sentenced by Canada's courts for their part in the Rebellion. Eleven Indians were sentenced to hang, but three received commutations to life imprisonment. While awaiting trial for three months, the Indian prisoners were kept in leg irons and chains. Ikta, Little Bear, Wandering Spirit, Round-the-Sky, Miserable Man, Bad Arrow, Man-Without-Blood, and Iron Body were hanged for murder; the executions were conducted in public on a scaffold in the NWMP Battleford courtyard.[15] The government advised the region's Indians to witness the executions "as it was held that such a tragic spectacle would be an emphatic deterrent against a repetition of such offences.[16] The other Indians convicted received sentences from two to 20 years.

Bands whose members participated in the uprising were also heavily penalized. Annuities, guaranteed in the treaties, were withheld; horses and guns were confiscated. From the time of defeat, the police "made greater efforts to restrict Indians to the reserves, and strictly regulated the sale of ammunition to them."[17] The additional suffering was designed to teach the plains Indians a lesson, and suffer they did.

The Canadian government, and its police, had promised the plains Indians that all would go well with the tribes, that the starvation and disease caused by the white man's presence would diminish, that they would be free to follow the ways of their ancestors on sufficient territories to meet their needs, if they would but sign the treaty. The men responsible for breaking these promises were not in jail; instead, the Indians were defrauded and those who objected were imprisoned and hung. The lesson was clear.

It was in this fashion that the Indians of the Prairies came to know the strong arm of the law. From the time of this last defeat, the tribes were to experience ever-increasing restrictions upon not only their freedom of movement, but their daily life. Society on the plains became segregated. The Indian was confined on reservations. Assiniboine Chief Dan Kennedy recalled the early days on the reserves.

> "The Indians were plagued with all kinds of restrictions imposed on them by the guardian government. We could not sell grain, cattle, horses, woods, hay, etc., unless we got a permit from the Indian Agents. We also had to get passes from the Indian Agent to go anywhere on social visits or business trips. The Indian reserve was a veritable concentration camp."[18]

These regulations were imposed daily at the discretion of the Indian Agent, but when enforcement became difficult, the NWMP stepped in.

An incident occurred which did little to aid the deteriorating relations between the Cree and the NWMP, and their Indian agents. Almighty Voice, a Cree, killed a steer in 1895, the circumstances surrounding the incident varying according to account. On October 22, the NWMP arrested Almighty Voice, along with another Indian man and woman, for the action, on a complaint by the Indian Agent. Almighty Voice had not obtained the Agents's permission to slaughter the animal. The constable guarding Almighty Voice was reputed to have jokingly referred to the likelihood of the prisoner being executed for his offence.

Shu-Kwe-Weetam, as his Cree brothers called him, took the threat seriously, and escaped from the prison; he returned to One Arrow's reserve, swimming the ice-filled Saskatchewan River. Sergeant Colebrook of the NWMP and his guide came upon the escapee and his wife, and in trying to apprehend him was fatally wounded by Almighty Voice.

One of the greatest man-hunts known to the old west ensued; $500, a sizeable sum at the time, was offered for information leading to the arrest of Almighty Voice. For almost two years the fugitives eluded the police, hidden by their sympathetic people. In late May, 1897, a police party spotted Almighty Voice, who wounded two of their number. The injured men lay unprotected at the hunted man's mercy, but Almighty Voice chose not to harm them further.

Both sides dug in for the battle. Almighty Voice, and two comrades, Little Saulteaux and Dublin, were cornered in a thicket which would later be known as "Almighty Voice's Bluff". For three days the struggle between the police and the desperate, brave youths balanced. The mother of Almighty Voice stood alone on a rise near the bluff, crying words of comfort, and anxiously watched the fate of her child. After charging the bluff, and losing three officers and one civilian, with three others wounded, the police determined on a safer, more effective way of ending their problem. Seven and nine pound cannon shelled the whole area for hours. The battered bodies of the three Cree were found when the firing stopped. The government vented a sigh of relief. It was clear, once again, that the law and the Indian Agent were to be obeyed. The Cree wept over the senseless tragedy.[19]

Life for the tribes was ruled by Indian Affairs regulations, which were rigidly enforced. To leave the reserve an Indian had to obtain a pass from the agent; it was within the agent's power to judge the need for the pass, and to reject anyone.[20] In the late 1880s the NWMP were particularly vigorous in enforcing the pass system, thereby monitoring all Indian movements. "The pass system was without legal foundation but the police had cooperated with the Indian Department in enforcing it as a matter of mutual convenience."[21] In 1892, the outright illegality of the passes was noted by several circuit court judges in discussions with Commissioner Herchmer of the Force. Although Indian Affairs was most anxious that the system be continued, after considerable debate the Force ordered all detachments to cease upholding the passes. The practice slowly fell into disuse.

During the mid-to-late 1800s, conflict between the Indian justice structure, and that of the white man escalated dramatically. Old traditions became offences during these decades, as the white migrants became more numerous.

At first, for example, the NWMP were sensitive to the different view of horse-stealing among plains Indians and the Canadian government. Among the plains tribes, the taking of an enemy's horse was a dashing show of bravery and cunning. Indian "horse-thieves" were initially merely relieved of their new acquisitions and returned to their reserve with a warning. However, as white settlers arrived in droves in the late 1800s, there was a call for stronger enforcement. The newcomers considered taking another's horse a serious crime. The white view predominated, and Indians began to be imprisoned for this "crime".[22]

The necessity for the NWMP to uphold the banning of Indian spiritual traditions further inflamed disdain for the police and their laws. The Sundance, one such ceremony, provided an occasion for self-sacrifice, often through self-mutilation, and long prayers. It was banned as a pagan ceremony through the Indian Act. Old Keyam, a plains Cree, commented on the law and its effects.

> "Freedom to worship as one's conscience dictates is a British principle. I do not believe that the law against the Sundance is so wise or so necessary as to warrant the contradiction of the principle. If its aim is to make Christians out of all Indians, that is absurd, for that cannot be forced. Legislation that would suppress the Sundance is only keeping alive what would almost certainly die a natural death in a few years if left to itself."[23]

The ban of this important and central ceremony pushed the Sundance underground, and caused secret defiance of a discriminatory law.

The traditional system of justice was gradually eroded, and outlawed. In 1885, a young soldier named Wu-wa-si-hoo-we-yin was called upon by the council of headmen of the village near Tullibee Creek to carry out an execution of behalf of the community. An old woman had repeatedly asked to be killed as she was turning into a "We-ti-ko," a cannibal, and did not want to hurt anyone. The respected young man carried out his abhorrent duty. During the police round-ups after the 1885 Rebellion, Wu-wa-si-hoo-we-yin was arrested and charged with murder. Through the intervention of outsiders, the Indian law was explained to the court. Rather than being executed, the "offender" was sentenced to 10 years in penitentiary.[24] Indian justice was dealt a severe blow. And, a young man was imprisoned for an act which only a few years before would have been not only legal, but honourable.

When their people died in the white man's prisons, Indian bands petitioned the government for compensation for the loss of life.[25] Traditional law on the plains required compensation for the death of someone under another's care, whether accidental or not. The records do not specify whether the government complied with the requests. It is somewhat unlikely, as these requests ended by the late 1800s.

It was inevitable that the NWMP would clash with the Indian system of justice and the soldier societies, its enforcers. Certain societies, such as the Black Soldiers, appear to have increased in strength with the arrival of the white men on the plains with its resulting increase in social disruption in Indian settlements. The NWMP forbid the Black Soldiers the right to punish their neighbours for infractions of Blackfoot laws.[26] Most soldier societies ceased functioning by the turn of the century. In effect this ban was the demise of traditional plains justice. Without the power to enforce, any system of law is useless.

As old justice waned, the newcomers' justice proved evasive at best and discriminatory at worst in protecting the rights of Indians. Bringing their grievances to Canadian courts often proved difficult, especially if the Indian victim had no one to confirm the charge. This was particularly true in the case of trial by jury.[27] Persons eligible for jury duty were land owners which effecitvely eliminated Indians. Indian reserves were not deemed to be owned by their residents, but rather, held in trust on their behalf by Canada. The frequent prejudice of settlers as jurors made police and the legal profession reluctant to bring a complaint by an Indian to court, unless his or her evidence was corroborated.

When Indians peacefully demanded the rights accorded to them by Canadian Parliament, they were frequently prevented from protesting by the NWMP. The Canadian Pacific Railway backers received 25 million acres of land in the plains and Rockies; the line of construction forged across several reserves, including that of Chief Piapot. The Chief claimed that the CPR had not even asked his permission to cut through his land, far less offered the compensation required by law. The British North America Act, and the Indian Act of 1867, Article 20, both stipulated that compensation would be made to the band of any reserve injured by or crossed by a railway, road, or public work, even when authorised by an Act of Parliament.[28]

When Chief Piapot and his band peacefully blocked the CPR route through his reserve, they were forcibly removed by the police.[29] In this instance, and many others, the NWMP upheld the interests of the railway, while violating the laws of Parliament in relation to Indians.

By 1905, when Saskatchewan and Alberta became provinces, the takeover of the plains by Canada was complete. The land of the plains tribes had been obtained by fraudulent, one-sided treaties. Legislation had been passed stripping band and tribal governments of power, and installing government agents as dictators. Spiritual and legal traditions had been prohibited, while white law and religion was superimposed. An apartheid had been created, whereby Indian people lived in forced segregation, out of sight and mind. The "Indian problem" was not only solved through a show of force, but forgotten; the plains Indians sank into oblivion for many decades. The occasional prick of conscience led to increased welfare, and greater funding for white religious orders attempting assimilation and conversion through residential schooling.

During the late 1800s and up to the mid-1900s, the Prairie tribes despaired. They were abused and disregarded. They were made to feel ashamed of being Indians. Children were removed from their homes at an early age to be schooled in the ways of the white men and "taught to despise their traditions."[30] Disease, hunger, drunkenness, and destitution prevailed where prosperity and pride used to reign. And yet, the plains tribes have survived to confront Canadian society, and its justice system, with the facts and casualties of the barbaric take-over of their Prairie home.

After the Second World War, a new "Indian problem" surfaced: imprisonment. Frequent confinement of Indians behind bars (as opposed to confinement on reserves) for drinking offences, vagrancy, and public nuisance was the sign of changing times. The reasons for this disturbing rise, and continued escalation of imprisonment of Indians are complex. The chapter In Perspective will focus on causes of incarceration.

During the 1940s and 50s on the Prairies, Indian people began raising their voices, calling for rights and recognition as Canada's Aboriginal people. Provincial organizations formed to lobby for change. Conferences, trips to Ottawa, submissions to Parliament and Cabinet led to some victories, including the lifting of the ban on the Sundance in 1951.

In 1960, the Indian population was granted the right to vote in federal elections and a new era was ushered in. Indian people suddenly became citizens in their own country. Canada was about to hear from its first citizens.

Endnotes

1. Alexander Morris, The Treaties of Canada with the Indians of Manitoba and the North-west Territories (Toronto: Belfords, Clarke & Co., 1880), p101.

2. Indian-Eskimo Association of Canada Legal Committee, Native Rights in Canada (Indian-Eskimo Association of Canada, 1970), p110.

3. Morris, The Treaties of Canada, p272.

4. Indian-Eskimo Association, Native Rights, p104.

5. Morris, The Treaties of Canada, p72.

6. T.M. Longstreth, The Silent Force: Scenes from the Life of the Mounted Police of Canada (New York: The Century Co., 1927, p101.

7. Howard Adams, Prison of Grass (Toronto: New Press, 1975), p73.

8. ibid, p84.

9. ibid.

10. David G. Mandlebaum, The World of the Plains Cree (Saskatchewan: University of Saskatchewan Press, 1967), p123.

11. Joseph H. Kinsey, Strange Empire: The Story of Louis Riel (Toronto: Swan Publishing Co., 1965), p414.

12. D. Bruce Sealey, Antoine S. Lussier, The Métis: Canada's Forgotten People (Winnipeg: Manitoba Métis Federation Press, 1975), p123.

13. J.G. Donkin, Trooper and Redskin in the Far North-west; Recollections of Life in the North-West Mounted Police, Canada, 1884-1888 (London: Simpson, Low, Marston, Searle & Rivington, 1889, p32-34.

14. Kinsey, Strange Empire.

15. Lorne Brown, Caroline Brown, An Unauthorized History of the RCMP (Toronto: James Lewis & Samue, 1973), p21.

16. ibid.

17. ibid, p22.

18. Dan Kennedy (Ochankugahe), ed. James R. Stevens, Recollections of an Assiniboine Chief (Toronto: McClelland & Stewart, 1972), p87.

19. Kennedy, Recollections, p81-85; and Chief Buffalo Child Long Lance, "The Outlaw", in I am an Indian (Toronto: New Press, 1975), p93-97; and

    Longstreth, The Silent Force, p216.

20. Donkin, Trooper and Redskin, p240.

21. R.C. MacLeod, The NWMP and Law Enforcement, 1873-1905 (Toronto: University of Toronto Press, 1976), p146.

22. ibid, p27; and

    Letter from Assistant Commissioner MacLeod to Lt. Colonel French, Commissioner of NWMP, 1875 (Ottawa: Canadian Archives, RG18, Volume 6).

23. Edward Ahenakew, Voices of the Plains Cree (Toronto: McClelland & Stewart, 1973), p138.

24. ibid, p95.

25. John McLean, The Indians: Their Manners and Customs (Toronto: Coles Publishing Co., 1970), p284.

26. Edward S. Curtis, The North American Indian (New York: Johnston Reprint Corp., 1970), 18, p190.

27. MacLeod, The NWMP, p145.

28. D.G. SMith, Canadian Indians & the Law: Selected Documents, 1663-1977 (Toronto: McClelland & Stewart, 1975), p93.

29. Brown, An Unauthorized History, p25-26.

30. Buffy Sainte-Marie, My Country 'tis of They People You're Dying Gypsy Boy Music/ASCAP.

Police Law

In May 1873, "An Act Respecting the Administration of Justice and for the Establishment of a Police Force in the Northwest Territories" was assented to by the Queen, having been passed by the Canadian Parliament.

The North West Mounted Police was created for a variety of reasons. Shortly after the Métis resistance of 1870, the formation of an armed force was strongly recommended to prevent similar occurrences. In 1872, the Lieutenant-Governor of Manitoba warned the Canadian government of pending trouble with the Indian population of the Northwest Territories, and advised the raising of a "military force to control these elements".[1]

The plans to build a Canadian Pacific Railway (CPR) caused certain elements in Ottawa to lobby for pacification of the Indian tribes along the route, to ensure the line's completion and financial success.[2] Longstreth of the NWMP noted that the United States "had spent $20,000,000 that year on exterminating her savages alone. It was obvious that Canada's Indians must be less expensively subdued."[3]

Concern brewed in Ottawa over the interest of the United States in the scarcely populated northern plains; the tendency for the Indians of this region to flirt with their southern neighbours added to Canadian authorities' anxiety. The territory had to be occupied effectively in the eyes of Ottawa. The spring massacre in 1873 of a large number of Indians in Cypress Hills by American whisky traders drew an interest in the lawlessness and barbarity of these traders in the Territories. The massacre hastened the passage of the bill, but the concept and legislation setting up a police force had been drawn up before.[4]

Unusual powers were given the fledgling police force. The NWMP were not only made responsible for policing the plains, but for the administration of justice as well. The Police acted in the capacity of magistrates and justices of the peace until 1905. Under the Act, the Commissioner and all officers were ex-officio justices of the peace, and two could try all but the most serious of cases, both in the Northwest Territories and Manitoba.[5] The Force also operated jails. "Where it is impossible or inconvenient, in the absence or remoteness of any gaol or other place of imprisonment", the magistrate hearing the case could have given the person into custody of the NWMP who would then imprison the offender, with or without hard labour.[6]

The NWMP were given the right to arrest, prosecute, judge, sentence and confine persons residing in the Northwest Territories.

For the first few years, the vast majority of inhabitants under the Force's authority were Indians and Métis. in 1874, three hundred men in scarlet crossed the border of Manitoba in their weary trek to the west. The members of this first contingent were all of European extraction, Anglo-Saxon in the main.

Originally, the police recruits were to include a substantial number of persons of mixed Indian blood, but the events at Red River soon changed this plan.[7] Almost all the officers had previous military careers and tended to emphasize military hierarchy and discipline. The men were largely untrained, the Training Depot not in existence until 1882.[8] Indeed, some members of the contingent had received their commission through influence rather than ability.[9]

As the NWMP settled into their forts in the Territories, a swift and outspoken reaction to their presence was sounded. In 1876, a grand convention of some 2,000 Métis and 3,000 Indian families from the Cypress and Wood mountains met 45 miles from Fort Walsh to discuss this new presence in their lives. A delegation of 50 was selected to address Major Walsh of the NWMP, and complain of their "Police Law". Major Walsh later described the meeting.

> "'They claimed that the law was inconsistent with the good government of a people leading a wandering life, and interfered with their domestic and social habits and comforts, and was to them oppressive....They, in a very humble manner, announced that they had decided to no longer obey the law of the police....I told them that the Government of Canada had decided that one set of laws (those I had read to them) should govern the whole country. To allow each community to make its own laws would destroy any state or country. I concluded by saying that the law would have to be enforced, even if force had to be used, and that while the Government of Canada wished to be their friends, if they became enemies it would be the fault of the half-breeds.' A day later, the delegation informed Walsh that 'our law would be observed, and that their council would be dismissed and their Government abolished.'" [10] (italics are the source's)

The Police Law was indeed foreign and inappropriate to the culture, history and life-style of the Indian and Métis people of the plains. The concept of a uniform body of law for all tribes in all circumstances was unheard of; that these laws were made in a distant place and imposed by an unknown people of a different nature was not only puzzling, but threatening. That the police would enforce these laws without reference to the chiefs and the elders' councils was without precedent, and viewed as disrespectful and incorrect. Imprisonment was a foreign concept, while hanging was so abhorrent to the plains people that Big Bear asked that one condition of the treaty being negotiated be that none of his people would ever be hanged.

In 1885 there were major changes. As a result of the Northwest Rebellion, the Force was increased to 1,000 men.[11] As settlers moved to the Prairies once the Territories were secured, the Indian and Métis population found themselves in the minority.

This new status and the rebellion itself altered the relationship between the NWMP and the Indians. The Indian tribes and the Métis were no longer a major threat; gradually persuasion and offers of protection and friendship changed to more open threats and strong law enforcement by the NWMP.[12]

The enforcement of liquor laws and the breaking of the whisky trade were initially a prime focus of policing activities. No statistics were kept in the 1870s, but in the 1880s, liquor offences were the largest single category of arrests and charges.[13] As white settlement increased, the ban of liquor became most unpopular and affected enforcement. Only the major traders, those who traded with Indians, and the indigenous population themselves, were as a rule, sought out and charged.[14]

In 1892, the prohibition of alcohol was lifted. Penalties for selling liquor to Indians, however, became more severe, and the enforcement of the liquor regulations under the Indian Act continued.

The NWMP had duties other than law enforcement. They were responsible for gathering the Indian nations together for the sale of their plains' home, and the confinement of the tribes on reserves. The compulsory schooling of Indian children, often in residential schools, was enforced in difficult situations by the Force. Treaty monies were doled out annually by the police in the Prairies.

And yet, it was not the NWMP who made these laws and regulations. Their job was to ensure that these rules were applied. In so doing, the police were often seen as the forerunners of all that brought the Golden Age of the Prairie tribes to an untimely end. The members of the Force were probably no worse than the people they represented, and in fact, were in many ways more progressive than the general white population. They did break the back of the corrupt whisky trade; they did not prevent atrocities against Indian and Métis people completely, but certainly reduced the harassment and brutality against Indians by prejudiced settlers. The NWMP fed starving Indians, at times camped in misery around police forts in the thousands, when they could.

The North West Mounted Police opened the flood gates to white settlement and economic inroads and to foreign government and foreign justice. In so doing, the Force won the lasting animosity of the original inhabitants of the plains.

Endnotes

1. Lorne Brown and Caroline Brown, An Unauthorized History of the RCMP (Toronto: James Lewis & Samuel, 1973), p12.
2. T.M. Longstreth, The Silent Force: Scenes from the Life of the Mounted Police of Canada (New York: The Centry Co., 1927) p6.
3. ibid, p7.
4. R.C. MacLeod, The NWMP and Law Enforcement, 1873-1905 (Toronto: University of Toronto Press, 1976), p16.
5. 36 Victoria (1873) Cap. 35, Schedule A, An Act Respecting the Administration of Justice and for the Establishment of a Police Force in the N.W.T. (assented to May 23, 1873), #15 and #34.
6. ibid, #7.
7. MacLeod, The NWMP, p8.
8. Longstreth, The Silent Force, p106.
9. C.P. Mulvaney, The North-West Rebellion of 1885 (Toronto: A.H. Hovey & Co., 1885), p37.
10. ibid, p86-7.
11. Longstreth, The Silent Force, p143.
12. MacLeod, The NWMP, p144.
13. ibid, p32.
14. J.G. Donkin, Trooper and Redskin in the Far North-West; Recollections of Life in the North-West Mounted Police, Canada, 1884-1888 (London: Simpson, Low, Marston, Searle & Rivington, 1889), p90.

The West Under Confederation

Canada assumed responsibility for administering the affairs of the Indian tribes of the west on the day that British Columbia entered confederation in 1871.

Ottawa soon discovered a sad state of affairs. The colonial government of the coast had had no definite policy towards the Indians of British Columbia, other than moving as many as possible onto the tiny parcels of land set aside as reserves. Indian territory had been seized rather than surrendered through treaties for specific right and compensation.

The amount spent on the aboriginal population by the colonial government was appallingly small. "Out of an estimated government expenditure in 1869 of 122,250 pounds, the amount put down for expenditures connected with the Indian tribes was 100 pounds."[1] This figure is deplorably low in light of the devastating mortality rates during the 19th century. In 1835, it was estimated that the Indian population of British Columbia was 70,000; by 1885 the numbers had declined to 28,000.[2]

The colonial government of British Columbia exposed, through its action — or more appropriately inaction — that it felt it owed nothing to the original inhabitants of the territory.

During the 1870s, the two levels of government argued about the lack of Indian treaties in the west, the federal government taking the stand that Indian title should be extinguished. Trouble was brewing; the authorities in Ottawa feared outright rebellion among some of the western tribes who were enraged by the theft of their land and the deaf ear to their pleas for justice by local white authorities. The federal Minister of the Interior warned the provincial government that in the event of conflict, Ottawa would side with the Indians over the land issue. He hastened to add in his correspondence: "Don't desire to raise the question at present but local government must instruct Commissioners to make reserves so large as to completely satisfy Indians."[3] The federal position was to change dramatically within a few years.

Between 1880 and 1910, the period of reserve allocations in British Columbia, Indian protests continued. A three-man joint commission was established to enquire into the causes of Indian unrest along the northern coast. During their presentation of their case, the Nass chiefs reproached the highly technical, bureaucratic form of the commission.

> "What we don't like about the government is their saying this: 'We will give you this much land!' How can they give it when it is our own? We cannot understand it. They have never bought it from us or our forefathers. They have never fought and conquered our people and taken the land that way, and yet they say now that they will give us so much land - our own land."[4]

Theft of their homeland and inadequate reserves spurred the development of Indian organizations, first at local levels, and eventually, province-wide. From the time that the west joined Confederation to the outbreak of the Second World War, at least eight political associations were formed by western Indians, of which six or seven were directly concerned with land claims and economic welfare.[5]

The Nishga Land Committee was formed in 1890, the Indian Rights Association in 1909, and the Interior Allied Tribes of British Columbia in 1911. "Because of the effectiveness of these three associations in raising the land issue the federal government in 1927 specifically prohibited the raising of funds by Aboriginal people to pursue questions related to land questions."[6] The Indian Act revision in 1927, c.32, s.6. used the law to eradicate organized demands for justice.

The final confrontation contributing largely to this government tactic was the eloquent case presented by the Allied Tribes of British Columbia in 1927 to the Special Joint Committee of Parliament. The committee, composed of politicians from both the federal and provincial levels, hurriedly stated that the tribes of British Columbia had no title to their land. Extinguishment was therefore seen as unnecessary.

The tribes were advised to stop their futile protest, and were provided by the federal government with $100,000 a year in lieu of treaty money.[7] The Indian Act revision ensured that such petitions would be an uncomfortable memory. The Allied Tribes collapsed under the defeat. But protest against injustice did not cease. Other organizations emerged, such as the Native Brotherhood of British Columbia, created in 1931, and the Pacific Coast Native Fisherman's Association in 1936. These organizations did not meet with any more success than their predecessors in negotiating a fair settlement to land claims, but did provide a vehicle through which common issues could be aired and tactics studied and tried.

A number of the men who developed these Indian organizations were reared under an experimental approach by the Roman Catholic Church called the Durieu system. A French priest named Durieu became Bishop of New Westminster in 1875, and quickly developed an approach to evangelizing which was adopted by missionaries on the coast. Durieu created a model for Christian Indian settlements which, in his mind, combined the best of the aboriginal culture with a Christian life-style and morality. The whole affair was to be directed by a priest with the assistance of Indian leaders. To commence such a project, the Oblate Fathers moved entire settlements of recently converted tribes to communities with new European-style houses, a predominant church and a school.

A mixture of traditional and white justice evolved in these villages in terms of laws, punishment and judicial structures. The most important Indian position in the Durieu settlements was the "Eucharist chief" who assisted the priest in spiritual matters.[8] The senior local chief and his co-chiefs acted in the capacity of judges, the priest having the right to preside over any hearings.[9] The priest was the ultimate authority in not only judicial matters but all concerns, usurping the traditional form of government by clan leaders. Indian watchmen were selected to report to the priest and chiefs on the behaviour of the settlement citizens. Indian policemen enforced the law and the sentences declared by the court.

Offences in Durieu justice were a blend of old and new, of Indian and white. Traditional dances, gambling, shamanism, polygamy, and potlatches were all banned. Alcohol consumption, failure to attend mass and communion at the appointed times, observance of the rules of the Sabbath, were on the Durieu list of crimes.

Punishment mixed the traditional with the European. The ancient fear of shame, particularly when public, was used by the religious order to enforce the revised code of behaviour. The church was a favourite location for such sanctions in the full view of Indian parishioners. The offender was at times required to say a certain number of prayers; a person was occasionally excommunicated if his offence was serious or one of a long series, his soul thus being damned. An offender might escape with the lighter sentence of flogging, another form of punishment introduced by these missionaries.[10] Promises to uphold the new code were often exacted by the priests by requiring their Indian converts to kneel and swear on their immortal soul that they would abide by the church's rules.

Some contemporary writers interpreted the Durieu system as little more than an attempt by the Church of Rome to ensure promises to uphold the church's doctrine were kept by Indian converts.[11]

With increasing waves of English settlement in the northern reaches of the west coast and interior towards the end of the 19th and into the 20th century, the Durieu system disintegrated. The anti-Catholic and anti-French sentiments of new white immigrants, coupled with the imposition of government supervision of the region dealt with the final blow to Durieu's followers. The experiment, however, continued to have far-reaching effects. The bulk of the Indian leaders who formed the early political associations were products of the Durieu days. They were reasonably knowledgeable about the ways of the white man, having attended European-style schools and abided by a code of behaviour with a strong white infusion. Furthermore, the traditional values encouraged by the Fathers, such as respect for their chiefs and elders and utilization of traditional power structures, left the Indians raised under the regime with a strong sense of the past, and a formidable sense of their Indian heritage. These men and women knew how to use the white system to fight for their people's rights.

The entrance of British Columbia into Confederation began the era of Indian Affairs, reserves and the Indian Act. Residential schools, missionaries, and Indian Agents appeared within a decade or two. It was the period during which the Indian tribes of the west coast lost their political, religious, and judicial freedom.

In this century, these same people adapted to their new and painful circumstances, organizing their resistance in a peaceful and solemn fashion.

The traditional activities banned by the priests, and later banned by the law, survived the many decades of their repression. The organizations that evolved brought home repeatedly to the non-Indian authorities that the Indian people of the west coast wanted their traditional customs, ceremonies, and lifestyle restored.

As we have seen in the chapters on traditional justice on the west coast, the potlatch was an economic, social and spiritual ceremony common to almost all the tribes of British Columbia. Among other functions, it allowed for a standard, unversally-accepted way to settle disputes within and between tribes and clans. With the banning of the potlatch came the prohibition of the common form of judicial settlement in the west.

The potlatch was forbidden in 1884 by Parliament, the revision of the Indian Act stating:

> "Every Indian or other person who engaged in or assists in celebrating the Indian festival known as the potlatch...is guilty of a misdemeanour and shall be liable to imprisonment for a term of not more than six months and not less than two months....[12]

Indian reaction was immediate but divided. Some Christian Indians approved of the measure, a few even having petitioned for such a law. Others petitioned the Canadian government to revoke the law. The potlatch went underground, and the protests continued.

In 1899, the Superintendent of Indian Affairs for the province received a declaration from the chiefs and head men of the Ki-ha-ten, Kit-la-tomic, and Kit-Win-Chilco tribes of the Nass River and its tributaries.

> "...In consideration of 'peace and love', we have relinquished the Medicine Towanawas doctrine, the Black Towanawas, the sacred dances, potlatches, our former mode of intercourse and peacemaking with other tribes."[13]

After 1900, the Christian and traditional Indian factions gradually came together on this issue. The Indian organizations which evolved in the first half of the 20th century mounted so much pressure that the ban on the potlatch was finally lifted in the 1951 revisions of the Indian Act.

Whether the authorities, through making the potlatch illegal, intended to discourage actions against the Protestant ethic or materialistic philosophy, or whether the government wished to terminate a ceremony at the very heart of the culture and society of west coast tribes, is in the long run immaterial. The fact remains that the Canadian Parliament forbade an intimate, fundamental part of Indian society, and, perhaps inadvertently, their traditional methods of settling disputes of a civil, criminal and political nature. The potlatch was not just another ceremony. In terms of its implications for Indian society, banning the potlatch was tantamount to dissolving the Roman Catholic Church and Parliament in Canada. It was both natural and necessary for western Indians to defy the law and practise this ceremony to avoid cultural and political extinction.

No doubt the use of legislation to prohibit the potlatch did little to engender respect in the minds and hearts of the west coast Indians for Canadian law.

The lifting of the ban on the potlatch and other significant cultural activities was the first shaft of light in an otherwise dark century for the western tribes. The era of Confederation on the coast witnessed an insistent tightening of white controls on Indian life through the Indian Act and its administration, and through the reserve system. Life was impoverished and harsh for those who lived out their days under the reserve system, and for those not included on the band lists, it was even more brutal.

The Indians of the west coast became divided, as in other parts of the country, into status and non-status by the Indian Act's definition of who was considered a legal Indian by the Canadian government. As there was only one treaty involving a very small number of people in British Columbia, the registration system was even more erratic and divisive. Some members of the same family became split, with both legal or status Indians and non-status Indians directly related. For some, the need to vote became so paramount that they were led, at times with considerable persuasion, to give up all their rights associated with Indian status, in order to gain all the "benefits" of becoming a Canadian citizen. For others, registration of their settlement took place while they happened to be in the mountains for several months. There developed through such circumstances a "Between People", a group treated in the same discriminatory fashion as their status brothers, with none of the protection of rights that the status Indians had guaranteed under the Indian Act.

Mary George is a non-status Carrier Indian near Telkwa of Bulkley Valley in the northern interior of British Columbia. She is a chieftess of the Grouse Clan and has lived in the region of her forefathers for all of her 78 years. Mrs. George can remember travelling with her family during their seasonal migrations until she was around eight years old. From her own memories and through information passed on through the elders in her family, it appears that her people led a prosperous and contented life in the late 1800s and early 1900s. She recalls stories about the nearby Hagwilget Village and its Durieu-styled justice. The Carrier nation had merely transferred the original hunting territories to trapping territories, and were living in much the same fashion as the generations before.

White settlement began in the Bulkley Valley in the 1890s. By the second decade in the present century, registration had begun and the government had established a reserve at Moricetown. Indian involvement in justice was eroded, and white police replaced Indian police and watchmen. The ancient rules for holding land and passing on rights for its use to future generations was destroyed when Indian Affairs took over the area. Young people acquired land before they were supposed to, before it was their right by the laws of the Carrier nation. Indian people were told they owned the land exclusively, the young people often becoming very possessive. Sometimes land was allotted to people who had no right to it at all, according to ancient tradition, or one member of a family would be given land while the rest of the family would having nothing. "I told the game warden that people used to get along fine; that man, he registers behind our back.[14]

After the reserve was established, and the Indian agent, Game Warden, and RCMP arrived, life became filled with hardship for the non-status Indians. Suddenly, they had no hunting or fishing rights, and were repeatedly fined and imprisoned for hunting out of season or trespassing. Mr. George, was a chief, but a non-status Indian, hunted on the land rightfully reserved for his use by tradition. In the 1930s during the Depression, Mr. George was continually harassed when he hunted and fished. On one occasion he was fined $85 for killing a moose on his hunting grounds. He was put in jail several times at Smithers for the same "offence". One of his trials was held at Burns Lake, but all the people who were travelling to the court arrived too late to witness the trial, or speak on his behalf. A relative petitioned for financial help from the Indian Agent as the family of six children and Mrs. George would be left to their own resources for a month. The Agent wrote that legally he could not aid the family, but offered $15 anyway. Mrs. George sent the token money back, and struggled on her own.

During these hard days, the family had their chickens stolen by white people in town, who would joke about their accomplishment; they were never arrested for the theft. The relations on the reserve could not provide much assistance, as Mrs. George was only allowed 24 hours by the Indian agent to visit her family. Even to catch a few fish, it was necessary to fool or "beat the police". The Game Warden used to destroy their nets, and wreck their traps; for these attempts to gain food, heavy fines were imposed by the local court.

A helicopter was often used to keep an official eye on the activities of the non-status Indians. "Some people from way off in cities come here to hunt; they kill what they want; our men are afraid to go out as there are too many guns; some of these men shoot at their own cars."[15]

"Reserve people can kill what they want; not us, we are between people, non-status".[16]

Endnotes

1. Hubert Howe Bancrost, History of British Columbia, 1792-1887 (San Francisco: The History Co., 1890), p719.
2. Wilson Duff, The Indian History of British Columbia; Volume 1, The Impact of White Man (Victoria: Provincial Museum of Natural History and Anthropology, 1964), p39.
3. ibid, p67.
4. ibid, p68.
5. Don Whiteside (Sin a paw), Efforts to Develop Aboriginal Political Associations in Canada, 1850-1965 (Ottawa: Aboriginal Institute of Canada, 1974, first draft), p16.
6. ibid, p14.
7. E.P. Patterson, The Canadian Indian, A History Since 1500 (Don Mills Ontario: Collier-Macmillan Canada, 1976), p171.
8. Wilson Duff, The Indian History, p91.
9. Patterson, The Canadian Indian, p165.
10. ibid, p165-6.
11. A.G. Morice, History of the Northern Interior of British Columbia (Toronto: William Briggs, 1905, Third Edition), p337.
12. Patterson, The Canadian Indian, p159.
13. ibid, p158.
14. Mary George.
15. Mary George.

PART V
RENAISSANCE AND JUSTICE

1960 - 1979

The granting of the unconditional federal franchise in 1960 brought the Aboriginal people of Canada into public focus. The right of Indian political expression within the formal electoral system created a climate of renaissance, of cultural and political revival among Indians and Métis that had not been witnessed in Canada for almost a century.

The fight for Aboriginal rights was taken to the arenas of the courtroom and federal cabinet. National Indian, Métis and Inuit political organizations flowered under the attention of Canadian society. Self-help among people of Indian ancestry was not only fostered in the political sphere, but was evident in the evolution of Native-run social and community programs.

The National Indian Council was formed in 1961 by a number of dedicated and anxious Indian organizations and individuals. This Council represented all persons of Indian descent. It dissolved into the status-only National Indian Brotherhood in late 1968.[1]

Internal dissension and lack of long-term support by regional associations was partly responsible for the failure of a unified effort by all Indian people to organize nationally. Government policy also hampered the movement and contributed to the divisions, exploding the common Indian front.

A policy paper introduced in 1969 for discussion by the federal government cemented the separation of status Indians from non-status Indians and Métis. The policy paper announced the Canadian government's intention to "wind up" the Department of Indian and Northern Affairs, remove the "legislative and constitutional bases of discrimination" (the Indian Act), and to give all Indians the status of ordinary Canadian citizens.[2]

The ending of special status for Indians was in effect a disclaimer by the Canadian government for Aboriginal rights, a negation of all promises and treaties with the tribes.

The Indian associations across Canada declared solid opposition to the 1969 Indian policy paper, and a flurry of activity produced alternative proposals by Indians, including the Red Paper. As pressure mounted, the Trudeau government announced its decision to formally withdraw the policy paper and launch into a dialogue with Indian people on the subject. However, the 1969 Indian policy paper continues to haunt all deliberations between the status Indian representatives and the federal government. Transfer of Indian Affairs' responsibilities to other federal departments and to provincial governments has fed Indian concern over their loss of status.

In 1968, the National Indian Council split into the National Indian Brotherhood and the Canadian Métis Society.[3] The 1969 policy paper emphasized the growing rift in various Indian and Métis organizations. When the status population was threatened with legal extinction, the interests of the different factions parted. In 1971, the Native Council of Canada was conceived through the union of Métis and non-status Indians, an uneasy marriage between two groups with different self-identities. Neither group had their Aboriginal rights recognized and this created a tenuous bond for common action.

The National Indian Brotherhood directed its attention to those who would be most affected by the loss of special status: the reserve Indians. As the migration of Indian and Métis people into urban areas escalated from a trickle to a flood, alternative organizations such as Friendship Centres emerged to provide services and a lobbying voice for city dwellers of Indian ancestry.

As Indian and Métis people became highly politicized, they increasingly used the courts to establish Aboriginal rights. A famous example was the Lavell case in 1973. It arose over the clause in the Indian Act which declared that a status Indian woman who married someone other than a status Indian lost her status and all status rights as an "Indian," as did her children. On the other hand, a status Indian man can marry a person without status, and not only did he retain his legal status, but his wife became a status Indian regardless of racial origin. Lavell's lawyer argued that this discrimination was in conflict with section l(b) of the Bill of Rights. The Supreme Court of Canada decided in a close decision to uphold the Indian Act.

The reaction to the decision was heated. Lavell herself best expressed the feelings of those who supported her cause:

> "Here we have a beautiful example of Canadian democracy in action. When a Canadian citizen actually comes forward for the rights accorded her by birth and law, the Canadian judicial and political system spend three years and over $10 million fighting each other through the courts to find out that neither the citizen nor any other Canadian has any rights and that 'I am not an Indian'...I know who I am. When the combined forces of the government and the courts of this country tell me that I am not and legally separate me forever from my community, it is they who are wrong."[4]

The organizations of status Indians supported the court decision. They stated that if the court could change the Indian Act on its own, without Parliamentary enactment, then there was little to prevent the courts from eventually undermining the Indian Act altogether. In the judicial procedures, there is no formal opportunity for outside lobbying; the status Indians in effect would be at the mercy of the courts.

Women's organizations, the Native Council of Canada, civil liberties groups, and other Indian people, declared that the decision was catastrophic in its implications. They declared that if the Bill of Rights was dead, then the government was free to enact legislation that was obviously discriminatory against any group, on any grounds. Without the protection of the courts in upholding basic civil liberties and human rights, we would be at the mercy of the law-makers, whoever they might be.

Other court cases had as much impact as the Lavell case. In 1967, a notable decision by Chief Justice Morrow of the Northwest Territories court held that a status Indian should not be arrested, fined or imprisoned for liquor offences that other Canadians were exempt from. In this case, commonly known as "Dry Bones," it was argued that the harsher penalty and special offences concerning the use of liquor by Indians under the Indian Act contravened the Bill of Rights, section l(b). Section 94 of the Indian Act was rendered inoperative by the Supreme Court of Canada as a result of Drybones.[5]

The hereditary chiefs of Six Nations launched court action to have the right to hereditary governance in accordance with the Iroquois constitution. In 1974, the Ontario Court of Appeal overturned a 1973 ruling by the Ontario Supreme Court to allow the Council of Hereditary Chiefs to govern their people. In June, 1977, the Supreme Court of Canada held that "the Six Nations Indians are a band under the Indian Act and are subject to a cabinet order establishing an elected system of government."[6] After hearing the final decision, a chief declared: "For those of us who really believe in the traditional ways, it's not right to go to a man-made government to decide whether we are to exist or not."[7] (The elective system has been in force on the reserve since 1924, around the time the RCMP are alleged to have taken the ancient wampum belts that recorded the Iroquois constitution).

Self-help by Indian and Métis people is the sign post of the last 20 years, reaching far beyond the political milieu. The first seeds of the self-help movement were cast within prisons.

Indian and Métis inmates were often outcasts from both white and Indian societies alike. Out of this exclusion came enlightenment, a realization that the only people who could or would truly help Native inmates were their fellow prisoners.

The first Indian Brotherhood was formed in Stoney Mountain Penitentiary in Manitoba whose limestone walls had caged Poundmaker and Big Bear many generations before. The fledgling organization received official recognition from the Commissioner of Penitentiaries in 1958.[8] In the beginning, the Brotherhood was composed of status Indian members only, but was enlarged in 1959 to include non-status Indians, Métis and Inuit in recognition of common problems and goals. The objectives of the group were based on a consensus that the main reason for incarceration of Indian people was the breakdown in traditional Native culture.[9] Consequently, cultural awareness and pride in identity as Indian people was promoted by the Brotherhood. Public speaking, education and contact with the outside world, and in particular Native people, became major aims of the Brotherhood program.

In 1963, Prince Albert Penitentiary Native inmates in Saskatchewan adopted the concept of a Brotherhood, the movement introduced through transfers from the prison in Manitoba. Knowledge of the justice system and other social institutions, leadership training, public speaking, life skills, communications, cultural pride, and self-awareness were stressed by the Brotherhood. Members provided mutual protection against cruel or discriminatory treatment by other inmates and staff. Support was provided by fellow members during times of personal crises such as a death in the family, or the suffering of corporal punishment (the lash). The long-term objective of the organization was to create awareness within themselves, to develop skills, and pass this knowledge on when released.[10]

Brotherhoods were formed in British Columbia Penitentiary in 1964, in Drumheller, Alberta in 1967, in Matsqui Institution of British Columbia in 1968, and then spread to every federal institution with Native inmates in the Prairies and west. The 10 federal prisons in the Kingston region in Ontario developed Brotherhoods and a Sisterhood between 1970 and 1972.[11] Since then, chapters have formed in Dorchester Penitentiary in New Brunswick, Springhill in Nova Scotia, and Archambault, Quebec. A Native Sons group has been organized in Guelph Reformatory in Ontario.

A wealth of activities have sprung from the Brother/Sisterhood movement. Each chapter has a newsletter; some have produced prison radio shows, such as "Moose Call" in Prince Albert. Others have nurtured programs which would benefit Indian people on the outside, while providing the inmate participants with useful skills. The Matsqui Brotherhood in British Columbia, for example, developed a project to steer young Indian people away from conflict with the law, and towards generally bettering their communities. Members of the Joyceville Brotherhood sponsored a youth program with similar ends. The Native Brotherhood at Mountain Prison on the west coast established the Native Extraordinary Line of Furniture, or NELOF, in February 1974. This cooperative was inmate-run and supervised, and produced custom-made wooden furniture. The men were trained, gained experience, and had a marketable skill upon release. In addition,

> "NELOF would seem to combine all the expressed needs - cultural, vocational and spiritual, as well as reaching out to the community. Yet in spite of a strong Native identity and pride of a Native product, members feel that the basic reason NELOF works is human. They see incarcerated persons as deprived of self-expression and creative outlet, spiritually dried-up, like flowers deprived of water."[12]

The Brotherhood/Sisterhood movement has produced many people who can articulate the needs, views, and recommendations of their incarcerated brethren. The words of Robert O'Connor from behind the walls of Joyceville Penitentiary demonstrate the growing awareness and clarity of thought of Indian and Métis people trained through inmate self-help. Mr. O'Connor was unable to attend a small conference in Ottawa held in the fall of 1976, and so he put his views on paper.

> "Today you ask for answers concerning natives and the justice system (your system). However, before we ask for answers we must face the problems, find out where they originate from and try to right them. You must understand our way of life. We were created by the Great Spirit to roam free and to live by His ways. All we needed, he provided. Then you came. We fought your ways, we lost and were conquered. Your kind of change and progress were too fast for our people and we were left in a limbo, caught between two cultures. We had not the skills nor the education to adjust to your society. We were forced to live on reservations in forced idleness because there were no jobs we could get.
>
> "You mocked our spiritual ways and called us savages; you sent your holy men to change us and bring us to your God - to a God that let you kill each other in big wars; who let you shun your brothers; who let you cheat and lie. The Great Spirit never taught us that.
>
> "You made us then, as now, prisoners of war. 'Come', you said. 'The Great White Mother will take care of her red children. The Red Coats will protect you.' From who and what? Your trickery and cheating ways; your alcohol? You said, 'Learn our ways and we'll feed you when you are hungry.' We are hungry! Hungry for equal opportunities; hungry for better education; hungry for better housing. WE are not only hungry; we are starving. FEED US AS YOU PROMISED!
>
> "We knew neither hunger nor despair before you came. We did not lie in gutters smelling of vomit and alcohol until you came. Your ways, your laws and your promises have created all the problems, and now you ask us for the answers. Your way of life has changed the values of the native people. Today they avoid each other and fight over grants from the government. Natives exploit other natives for the sake of money. They have lost their identity and are labelled by the government: status, non-status and Métis.
>
> "Your justice is for the rich only. How many rich men are there in Canada's prisons? How many people in prison can afford the best lawyers in the country? How many can afford a lawyer at all? In Canadian prisons today there are many people - not only natives, but others as well - who are there because of being totally ignorant of the law and its system. Many have been through the courts without knowing the nature of the offence or understanding the procedure of the law, without having a lawyer to represent them. Many have no idea what they pleaded guilty to. These were shuffled through the system and forgotten, but there

is no clause in the system to prevent this and no one hears or cares about it.

"Once you are processed into the penal system, you are forgotten and virtually lost. The system is geared to keeping you a convict. There are no rehabilitation programs in these places. Unless you rehabilitate yourself, you'll always return. The moment you walk out the door your chances of coming back are 88-1.

"Very little encouragement is given to the inmate to change his way of thinking. To assist him in any manner is against the rules of the old-line guards. To them, we are not human. We are garbage, and therefore should be locked away forever.

"The parole system is geared to keeping you on the hook for the rest of your life. Change your address, and a sadistic parole officer can send you back behind bars for nothing. Our prisons are full of parole violators who should not be there.

"For native inmates it's worse. We have no half-way houses or program to assist natives on their release. We have our own inside groups with outside volunteers, but they do not have either the time nor the money to help us with inside self-help programs or pre-release programs. Native organizations avoid us like the plague. They wish to forget we are natives also. We need native counsellors working inside penal institutions; we need native half-way houses; we need native inside involvement in pre-release programs. In order for men to care about themselves, they have to know others will care as well. Sometimes your own people make you ashamed to be one of them. They make you feel like you're an intruder. With your help, we can help ourselves, and by helping ourselves, we have a chance of cutting the odds on returning to less than 50/50."[13]

Despite the established nature of the Brotherhood movement, it was not until 1975 that the Commissioner of Penitentiaries officially recognized them as a viable self-help program.

The Brotherhoods, particularly where their numbers make up a majority of a prison population, have become strong forces in penitentiaries. Some authorities offer considerable resistance to the existence of the Brotherhoods. This hostility likely arises in part out of an anxiety over the increased power within the institutions of Indian and Métis inmates, and in part out of a lack of understanding as to Brotherhood goals.

Authorities and Native inmates have at times collided. Efforts to expose such incidents as high suicide and accidental deaths of young Native inmates through the mass sit-down strike in Prince Albert Penitentiary in 1975 have led to regular or mass transfers to other maximum security penitentiaries. This has fostered a lack of continuity of leadership among Brotherhoods, but also an exchange of programs and ideas for change among Native inmates organizations across the country.

Most Brotherhoods and Sisterhoods have helped men and women of Indian ancestry to walk straight-backed out of prison with a renewed spirit and a fresh sense of direction. Many members find a pride in their heritage, where shame used to dwell.

On occasion, as in any group, some members of these inmate organizations have abused their power in the harsh reality of prison life, or thorough their own personal failings. However, many people who have participated in Brother/Sisterhoods have developed a resolve to put their energies towards improvement of their peoples' lot; they have often developed skills in bringing about change in a peaceful but effective way. Several of the leaders of Indian and Métis organizations have been trained in the Brotherhood programs. For other members, they at least have acquired some comfort in their bleak cell existence from fellow inmates who understand their desolation and anger. The Brotherhood makes "Doing Time" a little easier.

As the Brotherhoods evolved, services operated by Indian and Métis people were born. The mass migration of Native people to cities and towns was in full swing by the late 1950s. These migrants met with difficulties in their alien surroundings. In response, a Friendship Centre was created in Winnipeg in 1958, with a centre in Vancouver close on its heels. These centres began as a drop-in service for urban Natives and a bridge between the Indian and white worlds. Gradually, the staff began to build a network into other social services for mutual referral. Local problems were identified by centre boards and staff, and innovative programs in drug and alcohol counselling, court work, prison liaison, and children's services were established over a 15 year period.[14]

The emergence of Friendship Centres in urban areas was a catalyst to non-reserve-based Indian and Métis programming. The Centres also served as a training ground. Men and women moved from staffing a Centre to government positions, and to work as political leaders.

One problem quickly recognized by the fledgling Centres was the growing number of incarcerated Natives. It was clear that people of Indian ancestry were frequently unfamiliar with the laws they were violating, or of their rights as accused. Language and cultural barriers further added to their disadvantages. In the early 1960s, the first court worker program was created through the Winnipeg Friendship Centre, the project staff referred to as Court Communicators. They explained legal rights to all accused Natives, obtained a lawyer or acted as an advocate in court, ensured or provided translation services, and generally promoted fair treatment. In the early 1970s the Manitoba government assumed responsibility for the program and it has continued to expand.[15]

The Edmonton Friendship Centre took up the banner next, and developed a court worker program in Alberta in 1964. One of the early court workers developed the organization into a province-wide program. In 1970, the organization was reorganized as the Alberta Native Counselling Association, and added a drug and alcohol counselling program.[16] The court worker concept spread. British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Prince Edward Island, the Northwest Territories, and the Yukon now have court worker programs.[17] The role of the court worker has also expanded to incorporate liaison between Natives accused and their lawyers, encouragement of Native involvement in the judicial process, legal education as a preventive measure, and provision of certain social service functions.

As Indian and Métis people were processed and recycled through the criminal justice sytstem, another difficulty became apparent: lack of after-care services appealing to and effective with Native people to aid in reintegration in their communities. X-Kalay Foundation was conceived in January, 1967, largely by Indian inmates of British Columbia Penitentiary; it was established as a halfway house, or post-release centre. In 1968, X-Kalay branched out to serve all inmates; the Native ex-inmates felt out of place in the mixed house, and drifted away. The need for an organization designed for imprisoned and semi-imprisoned Indian and Métis people was crying out to be met. As many as 90 to 95 per cent of Native people in federal prisons in British Columbia at the beginning of the 70s were serving their sentences to the full, usually in the confines of maximum security institutions.

In 1970, the Allied Indian and Métis Society (AIMS) was inaugurated as an organization run by Native inmates for their brothers. The members of the Brotherhoods in the western prisons comprised the sole voting members of the AIMS Board to ensure that the programs and policies of the organization were controlled by those requiring the service.[18] A Native halfway house was quickly established.

An inmate from British Columbia was transferred to Joyceville Institution in Kingston in 1973, and AIMS Ontario soon sprung into being. The main focus of efforts by the Native inmates and outside supporters was the establishment of a Native halfway house. Despite efforts since 1972 in Kingston, Toronto, and even Ottawa, no house has yet been funded by the federal government for Indian and Métis federal prisoners in Ontario.

Many Natives, particularly status Indians, serve their full sentences in maximum security institutions. Anyone in maximum has considerable difficulty obtaining parole, and thus most seek lesser security imprisonment before applying if they know "the ropes." Indian inmates often cannot read, write, or even speak English or French. Levels of schooling, and knowledge of survival skills in a world of white regulations, further reduces the Native inmate's chances at "easy time" or early release. Daily life is regimented in a prison; the inmate is trapped in a multitude of rules, the violation of which usually results in loss of privileges, transfer to maximum security, or confinement in solitary. Regulations also govern temporary absence and parole, as well as transfers to medium and minimum security institutions. These procedures, often confusing to staff and inmates, are usually baffling to Native inmates.

An experiment began in the early 1970's to tackle the communication and procedural difficulties that Native inmates faced with prison and parole administration. The Canadian Penitentiary Service began contracting with private Native service groups to provide staff who became known as Native Liaison Officers. The Native Liaison Officers were expected to act as the centre of a communication network between institutional staff, Native inmates, outside services and Native communities, as well as increase the understanding and access of all these parties to the others.

The Liaison concept spread and within six years became a common, although often undersupported, service for federal Native inmates. AIMS in both British Columbia and Ontario, Native Counselling Services of Alberta, Natonum College in Prince Albert, Native Clan of Winnipeg, and the MicMac Friendship Centre in Halifax, have provided a Liaison program to the penitentiaries, and usually to provincial institutions in their areas.

Although the role of alcohol in Native conflict with the law had been aired in reports and briefs from Indian and Métis groups for more than a decade, alcohol counselling programs were not supported by governments until the 1970s. Alberta Native Counselling Services began an alcohol and drug program in l970. Neechi Institute was formed in July, 1974 in Alberta. The latter program concentrates on "developing the individual's basic learning-survival skills....Upon moving to a higher level of skills the trainee's task is then to train others in their communities, utilizing the same learning process that they have experienced."[20]

Pressure for substantial funding in the area of prevention, counselling and treatment of Native alcohol abuse gave birth to the National Native Alcohol Abuse Program in 1974-75, on a three year pilot program basis. The Department of Indian and Northern Affairs co-sponsored the program with the Medical Services Branch of the Department of Health and Welfare, which services the status Indian population. Consequently, federal money was restricted to organizations whose boards and client groups were mainly status Indians. The assumption that provincial funding would be available to other Native people was scuttled by the federal government's approach. Ottawa announced the massive new fund for all Aboriginal people with little or no provincial consutlation or agreement for participation. Thus, the Aboriginal people who could receive funding for alcohol and drug programs became drastically reduced in practice. Nevertheless, 80 projects were underway by early 1977. The fund was extended for another three years.

It has long been suggested that involvement of Indian and Métis people in the administration of justice will help render equitable justice for Aboriginal people. A few attempts at such involvement have been supported by governments of late, but in most cases, the white bureaucracy maintains control of the staff, policy and direction.

As a response to the serious inadequacies of the Band Constable policing system for reserves, created in the early 1950s, the Department of Indian Affairs established a Task Force on Policing on reserves. In their 1973 report, the task force unveiled three basic options or models of Indian policing: band council policing, municipal status, and either a separate Indian police force or an Indian branch or contingent of an existing police force. The federal government chose the third option, in the form of Special Indian Constables as part of the RCMP.

The special constables are under the supervision of the local Detachment Commander. They

> "investigate and enforce uncomplex provisions of the Criminal Code, diversified federal, Provincial, Territorial Statutes and Municipal By-Laws. They (will) also assist Senior investigators in the investigation and enforcement of the law, and perform related duties. S/Csts, also, under the existing preventive oriented policing concept, shall assist in the development of a better rapport between the R.C.M.P. and the community."[21]

The first eight special constables were recruited for Saskatchewan. As of October, 1977, their numbers had grown to 92, with 132 positions in total available.

The Special Constable program has its proponents and opponents. Some see it as a major improvement to past policing approaches. The model allows for fully-trained Indian police working on reserves, with all the expertise and aid that the larger, established force can provide.

Others denounce the program as a token gesture, wherein the balance of power is maintained. The laws of the non-Indian are still imposed under the direct supervision of a non-Indian authority. The Band has little more than advisory capabilities concerning the RCMP Special Constables. Opponents further charge that the implementation of the special constable model was done in a precipitous fashion, and in fact was imposed. The "Alberta on Reserve Policing Background Paper" clearly states the concerns of the Alberta Chiefs:

> "Band Councils in effect are not involved in the program - the Province has not heard them in any sense of that verb; Indian Special Constables R.C.M.P. are deployed away from home Reserves, and are in areas where the Indian languages are in themselves foreign; they are policing Indians in non-Indian communities; they are not policing the Reserves to any greater extent than the R.C.M.P. did hereto; Option 3(b) in Alberta is not an on-reserve program and does not conform even remotely, to the principles enunciated in the Policy Report

of 1973".[22]

The Dakota-Ojibway Tribal Police Committee in southern Manitoba stepped forward in December, 1974, with a bold concept in policing Indian reserves. The committee proposed that Indian constables be under the direct supervision of a Tribal Police Commission. After three years of negotiating and bounding through bureaucratic hoops a revised proposal was given the go-ahead in 1977 as a three-year pilot project. The Commission itself is made up of two representatives of the RCMP, the Attorney-General's Department of Manitoba, and the Tribal Council. The policing of eight reserves emphasizes a preventive approach and legal protection of the Indian citizens. A great many eyes will be watching this daring experiment.

An Indian Justice of the Peace program was initiated in Saskatchewan by the Attorney-General's Department in consultation with the Federation of Saskatchewan Indians. These justices are appointed to hear summary conviction offences and provincial offences committed on the reserves. However, the Indian justices of the peace deal only with cases in which the accused pleads guilty. "Their prime purpose is to develop sentencing options that are more oriented toward retribution in the community than toward the traditional (white) sanctions of fines or imprisonment."[23] (italics are the author's). A number of Indian people have expressed considerable disagreement with the restrictions placed on this program.

Shortly after the start of the Indian Justice of the Peace program, an Indian Probation Officer Program was created in the summer of 1975 in Saskatchewan. Originally entitled the Indian Community Corrections Worker Project, the program was jointly sponsored by the Solicitor General of Canada and the Social Services Department of Saskatchewan, in close cooperation with the Federation of Saskatchewan Indians. The concept envisions a much broader role for the Indian staff than traditional probation supervision; community corrections and alternatives to courts are fostered on the selected reserves, in addition to efforts to strengthen the family and community as a whole.

Other programs are struggling to take hold and survive. Such projects as the High Level Diversion Project in Northern Alberta under the Alberta Native Counselling Services, the AIMS diversion proposal on the west coast, the L'il Beavers prevention program for Indian children in Ontario under the Friendship Centres, Atlantic Challenge sponsored by a group of innovators in Nova Scotia, Neechiwam under Native Clan in Manitoba, and the Legal Centres in Frobisher Bay in the N.W.T. and Goose Bay-Happy Valley, Labrador, are charting a difficult course towards Indian justice.

It is evident from this over-view of the development of Native groups in prison and Native services on "the street" that Indian and Métis initiatives are bearing fruit after a long, hard winter. However, the projects that have managed to take root are continually seeking sustenance; funding is usually short term, most projects financed on a pilot project basis with little hope of permanent funding. Submissions to funders often must be altered from the original design of the community in order to meet arbitrary government criteria.

Government funding policies vary not only from one level of government to another, but from department to department, and division to division. Some federal departments will only consider programs designed and implemented for all Native people, while others will only fund programs specific to status Indians. "Some provinces and territories provide special funding to Native groups to operate in criminal justice matters; other prefer to offer funding through general programs; some provide very limited funding for any community involvement."[24] Even those who are persistent enough to wend their way through the funding maze must wait for months, and even years, for a response to their submission.

The sporadic attention of the federal government towards the concern of excessive Indian conflict with the law was a response to a report entitled Indians and the Law. The study was commissioned by the Department of Indian Affairs in 1964. The Canadian Corrections Association was requested to investigate the "high frequency of appearances in court, jail committals and recidivism" of Indian people.[25] After a two year survey undertaken under the guidance of a committee of Indian and non-Indian experts, a report was released which contained a number of recommendations. The proposals addressed the lack of child welfare services, jurisdictional conflicts and vacuums, policing problems, ignorance of the law, liquor violations and legislation, prevention, parole and after-care difficulties, and employment of Indians and Inuit in the judicial system. The report sparked the development of a number of improvements initially, but within a few years the momentum towards significant change lagged.

It was not until 1973 that the problem resurfaced publicly in its ugly proportions. That year a Northern Justice conference was held in Manitoba at which Native participants focused on undue incarceration of their brothers and sisters. In December, 1973, the first national Ministers of Corrections meeting in 13 years was held. The Manitoba government presented its concerns over the growing numbers of Native inmates highlighted by the conference earlier in the year. The Ministers decided to hold a national Ministers conference the following year concerning Natives and criminal justice with Native advisers in attendance. As planning progressed the concept of the proposed meeting developed into a full scale convention of Indian, Métis and Inuit people with federal and provincial ministers and officials. A steering committee was formed of six national Native associations and four federal departments, a group which became known as the National Component.

The new planning group delayed the conference until February, 1975 to allow for ample planning across the country. The conference was to be, above all, productive and solution-oriented; it was designed to result in a wide number of well-researched recommendations. To this end, Native groups across the country developed position papers, including Native Brotherhoods and Sisterhoods. Governments, at times in concert with their respective regional Native groups, produced statements as well. Twenty-two federal and provincial ministers were invited to participate in workshops for two days, and, in a full, public ministers conference on the third day, to consider the recommendations.

More than 500 people deliberated on policing, courts, probation, parole and after-care, the administration of justice, prevention, and institutions from an urban and rural perspective as these issues relate to Native people. In addition to the hundreds of recommendations presented in individual briefs, the conference delegates voiced almost 200 proposed solutions to the myriad of difficulties Native people are experiencing with justice. These recommendations affected every federal and provincial department in the social service sphere; some of the larger concerns of the philosophy and ethics of the present justice system were also addressed.

On the final day of the gathering, the ministers held an open discussion to consider a selection of three dozen recommendations. Commitments for action by the ministers covered every front. The final words of the Indian, Métis and Inuit delegates emphasized in a quiet but deliberate tone that the ministers had their considered proposals. The responsibility to act was squarely on the shoulders of the ministers and senior officials who promised in public to carry out specific recommendations. Hollow words would no longer be tolerated.

The worst suspicions of the Native delegates have proved themselves undeniably true. It became apparent within a matter of months that the government had been insincere, and even fraudulent, in its promises for action. The Native associations have accused the government of deliberate inaction. They note that if a government is truly interested in combatting a problem and calls a meeting for direction, such as the Edmonton Conference, then they would submit budgets to their treasuries and cabinets to allow for implementation of recommendations coming from such deliberations. Increased allocation of funds for programs to combat incarceration and recidivism of Natives were not sought by most governments either prior or subsequent to the conference. Indeed, some departments have even reduced their expenditures.

Most programs which have received financial support from governments since February, 1975 are those which were entrenched well before the conference. Court workers, liaison officers, and special constables have all experienced some increased funding. Native alcohol abuse projects have also been blessed with funding; this program however was initiated before the ministers' promises. Innovation has suffered, particularly since the implementation of severe government cutbacks. Prevention programs, community development schemes, Brotherhood and Sisterhood activities, employment of Natives in the justice system, Peacemaker's Courts, diversion projects, massive legal education programs, incarceration alternatives, and Native halfway houses have all received little, if any, attention or support by governments.

Progress has been hampered by the mode and type of funding approaches. For example, the Special Programs Branch of the Canadian Corrections Service of the Ministry of the Solicitor General has a small budget for services aimed at "minority" groups within penitentiaries, including women, Natives and Blacks. Even where the Native population of a penitentiary is over 50 per cent, their programming requests are slotted into this "special" category. However, the funds technically available to Native groups for prison related services are grossly inadequate and are largely allocated to on-going programs already in existence such as the Liaison Officers.

A philosophy still prevalent among penitentiary administration is a strong inhibiting factor in changing this stagnation. It is generally perceived that Native inmates already have equal programming in that they may take advantage of services already offered within the penitentiaries. Penitentiary personnel generally do not recognize that groups such as Alcoholics Anonymous, the JayCees, Life Skills programs, and church projects are developed by and appeal to the non-Native population. To further complicate matters the Brother/Sisterhood programs are not seen by a significant number of prison employees as legitimate self-help endeavours.

Ministers agreed to support "(p)rogrammes, particularly of a social, cultural or educational nature, special counselling services and community based work programs such as forestry camps must be made more available to Native inmates and must be tailored to their specific needs."[26] Native groups have struggled for funding in order to fulfil this agreement, and have too often painfully expired in the fact of administrative blockage and funding vacuums.

Some departments have attempted to fulfil at least some of the commitments made by their ministers. The RCMP, for example, has increased the special constable program, as agreed. They have developed a sensitization program on multi-culturalism for recruits in the Regina training depot. The RCMP have failed, however, to obtain a meaningful dialogue with Native organizations concerning their policies and programs. A Native Policing Branch was established shortly after the 1975 conference in an attempt to obtain this rapport, but through short-sighted planning their goal has not been reached. As the function of this Branch is program and policy development in relation to Native people, this division could have provided a unique opportunity to employ Native people as civilians to develop a communication link between the Native sector and the Force. This approach has been recommended by Native organizations for more than four years, but, to date, has not been acted upon. This is all the more tragic when the deterioration of RCMP/Native relations in the 1970s is considered. Incidents such as the 1974 demonstration on Parliament Hill, allegations of police surveillance and harassment of Indian activists and elected leaders, and accusations of police brutality against Natives as a usual enforcement technique, cry for a major change in Native/RCMP relations.

The final agreement by ministers at the conference concerned the establishment of a follow-up mechanism: advisory councils. A council was created to advise the federal government comprising a representative from National Indian Brotherhood, Native Council of Canada, Inuit Tapirisat of Canada, National Native Women's Association, National Association of Friendship Centres, National Native Law Student's Association, Ministry of the Solicitor General, Department of Justice, Secretary of State and Indian and Northern Affairs. This group became known as the federal Advisory Council on Native Peoples and the Criminal Justice System or the FAC. In addition, provinces and territories were to establish equivalent councils composed of the various service and political Native organizations. Delegates from the provincial and territorial councils and the FAC were to comprise an umbrella council known as the Canadian Advisory Council on Natives and Criminal Justice (CAC).

Four years later, it is apparent that the concept of Native advisory councils on justice is fraught with problems. As has been pointed our earlier, there are deep rifts within the Aboriginal population which have resulted in different and often conflicting political needs and organizations. In some provinces, these differences prevented a joint committee from being created, or added to difficulties in effective functioning. In some cases, status Indian organizations have withdrawn from councils mainly over jurisdictional concerns. Specifically, a number of status Indians were opposed to deliberating with provincial governments for fear of undermining their special relationship to the federal government. To negotiate services with a province was in fact implementing the 1969 Indian Policy Paper. In other cases, the issue of criminal justice has been a low priority with some Native leaders or organizations.

In addition to political and jurisdictional differences, the lack of financial and moral support for advisory councils by governments has aggravated the difficulties. Only the Ontario Advisory Council and the FAC (since renamed The Canadian Aboriginal Justice Council) have received funding, and only after threatening to close down altogether. Without staff to do the necessary research and background work, councils were only able to function minimally, with irregular meetings and distribution of assignments to already over-worked individuals.

If councils are to effectively criticize and guide governments to improve the situation of Native people in relation to the justice system, they must be informed of all developments and plans. As a general rule, information and meaningful consultation from governments has been poor to non-existent. Refusing to fund staff who could perhaps retrieve critical information from the complex of government structures on behalf of these advisory councils, only deepens the suspicion of government insincerity and double-dealings.

Governments, unfortunately, are not the only ones who have failed to show meaningful interest in incarcerated Indians and Métis. The Native organizations themselves are often at fault for forgetting their imprisoned brothers and sisters. At the conference in Edmonton, it was clearly stated by inmate delegates that they do not benefit from the money Native organizations and Band Councils receive on a per capita basis. Indian delegates called out for involvement of outside organizations in supporting and caring for those "on the inside." The same few faces have appeared at Brotherhood and Sisterhood meetings since the conference. For example, the Stoney Mountain Brotherhood held a small conference inside the Penitentiary shortly after these recommendations were approved and presented by Native leaders. The meeting was called to establish closer ties with the Indian and Métis communities from which the inmates came. Although invitations were reported to have been sent to dozens of chiefs throughout the province, only one chief attended. Early in 1977, a similar meeting was scheduled, but was cancelled through apparent lack of outside Indian and Métis interest.

A chance to change the traditional relationship of the government justice bureaucracy with people of Indian ancestry has been tossed aside. The conference was in effect the government's sole response to mounting criticism from the Native people about the injustice of justice. The conference was a stall tactic that appears to have been frighteningly successful. Our prisons continue to warehouse an outrageous number of Native people. In perhaps the most tragic irony of all in the past two decades the struggle for Aboriginal rights has inadvertedly subverted the struggle of human rights for Indian and Métis prisoners. And all the while, Aboriginal rights are treated as privileges by the Trudeau administration as they barter with the oil and gas companies.

Endnotes

1. Don Whiteside (sin a paw), Efforts to Develop Aboriginal Political Associations in Canada, 1850-1965 (Ottawa: Aboriginal Institute of Canada, first draft, 1974), p73.

2. Statement of the government of Canada on Indian Policy (Ottawa: Queen's Printer, 1969), p6.

3. D. Bruce Sealey and Antoine S. Lussier, The Métis: Canada's Forgotten People (Winnipeg: Manitoba Métis Federation Press, 1975), p165.

4. Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development (Ottawa: House of Commons Issue Number 53, May 25, 1976).

5. Delia Opekokew, The Special Status of Indian People Within the Constitution of Canada (Toronto, unpublished, 1977).

6. Canadian Association in Support of the Native Peoples, CASNP Bulletin (Volume 16, No. 3, October, 1975).

7. ibid.

8. Charles Hill, History of Native Brotherhoods and Sisterhoods (1977, unpublished), p3.

9. ibid, p1.

10. Interview with Joseph Blyan, Edmonton, Alberta.

11. Hill, History of Native Brotherhoods; and

    CASNP Bulletin.

12. CASNP Bulletin, p18.

13. Letter from Robert O'Conner of Joyceville Penitentiary to the Symposium on Natives and the Criminal Justice System, held at Carleton University, Ottawa, October 2l, 1976.

14. Interview with Ed Buller, National Association of Friendship Centres.

15. Interview with Al Chartrand, Native Clan and Court Communicators, Winnipeg.

16. Chester Cunningham, "The Native Offender" in The Offender, ed. C.H.S. Jayewardene (Ottawa: Department of Criminology, University of Ottawa, 1976).

17. Canadian Advisory Council Newsletter (Ottawa, February, 1977).

18. Interview with Any Anderson, Allied Indian and Métis Society, B.C.

19. Métis and Non-Status Indian Crime and Justice Commission (Serpent River Reserve, Cutler, Ontario: Woodland Studio, 1977).

20. Canadian Advisory Council Newsletter.

21. National Conference on Native Peoples and the Criminal Justice System, Briefing Book (Ottawa: Canadian Intergovernmental Conference Secretariat, 1975), Tab 13, p6.

22. Métis and Non-Status Indian Crime and Justice Commission (Serpent River Reserve, Cutler, Ontario: Woodland Studio, 1977), p178.

23. Canadian Advisory Council Newsletter.

24. Report of the Task Force on the Role of the Private Sector in Criminal Justice, Community Involvement in Criminal Justice (Ottawa: Minister of Supply and Services, Canada, 1977), Volume I, p82.

25. Canadian Corrections Association, Indians and the Law (Ottawa: Le Droit, 1967), p9.

26. C. Jefferson, Referral List of Recommendations from the Conference on Native Peoples and the Criminal Justice System (Ottawa: Ministry of the Solicitor General, 1975), p2.

In Perspective

The preceding chapters should allow us to comprehend the present relationship of Indian people and Canadian justice in light of its historical roots. On the whole, people of Indian ancestry are more likely to be arrested, more likely to plead guilty, more likely to be counselled by legal aid or appear without legal advice, less likely to be placed on probation, more likely to be incarcerated in maximum security institutions, more likely to serve their full sentence, than any of their racial or ethnic group in Canadian society. The reasons for this state of affairs are complex, as intricate as society itself. Some factors involve the law and its administration, both historical and contemporary. For other answers we must look to broader social, economic and political realities.

While probing the reasons for the high degree of Native imprisonment, it is necessary to consider the difference between east and west. Imprisonment of eastern Indians is markedly less than for western Indians. In the Maritimes, white settlement and its effects on Indian people reached its peak centuries ago. From 1500 to 1763 the French mingled with and lived among the eastern tribes. The Maritime Indian nations were in effect defeated when their European allies signed the Peace of Paris agreement; British law was imposed methodically thereafter. We do not actually know the full effects of European judicial authority on the People of the Dawn. We do know, however, that white population in the east was gradual, and that the relationship between Europeans and Indians was long standing.

In comparison, change occurred with alarming speed and intensity in the Prairies, the north, and the west. Settlement of a significant nature came in two waves; shortly after the entry of these regions into the Confederation of Canada, and after the Second World War. The first influx of white migrants occurred just after the territory of the plains tribes had been secured by treaties and the military. The indigenous population was literally banished within their own country, confined on reserves. An apartheid was created, a system of forced segregation was maintained by the government of Canada, and supported through legislation, Indian Agents, police, courts and prisons. White authority in the west was sudden and final.

After the Second World War, the Prairies and west coast experienced rapid economic and population growth. The reserve Indians were freed of the pass restriction which had imprisoned them, and they appeared in urban areas in expanding numbers. Indian reserves and Métis colonies which had been tucked away for years were suddenly touching non-Indian towns and cities. As farming, gas and oil production and lumbering ate away at Indian and Métis economic mainstays of trapping and hunting, conditions on reserves became critical. A migratory pattern based largely on the seeking of employment and escape from reserve and colony conditions began in the early 50s, leading Métis and Indian people into the city.

For the first time in almost 100 years, the Indian and non-Indian were confronted with each other. The urban environment was weighted in favour of the white population. Unemployment among people of Indian ancestry was staggering, the result of lack of skills for city work and outright discrimination against the colour of their skins. (In 1971, the Department of Indian Affairs estimated that around 68 per cent of the urban Indian population was unemployed.) Skid rows became a refuge for Indians and Métis lost in the city and alcohol and other drugs a vehicle for escape.

> "For the migrant Indian skid row resolved the tension which arises from the combination of a desire for living in the city with the intense need to avoid a milieu dominated by middle-class non-Indians. Inevitably located in an urban setting, the skid row also offers protection from mainstream life."[1]

When the white and red races had last met directly, the white man was lost in the world of the Indian. Europeans were welcomed at first, and shown the skills necessary to endure in this natural environment. White men survived and flourished under Indian tutorship. The situation was suddenly reversed, with the Indian coming into the white man's domain: the city. But no help awaited him in the mid-1900s, and indeed, the situation is little improved today.

When the Indian needed the helping hand he had once extended in friendship, he was met with a clenched fist. Many of these impoverished Indian and Métis migrants found themselves in a courtroom or a prison cell, often in a matter of a few days of entering the city.

Migration into the urban centres has continued to escalate, just as sprawling metropolitan areas have encroached on reserves. The attraction of the city has been particularly tempting to young Indian and Métis people. The Métis and Non-Status Indian Crime and Justice Commission questioned 316 Native inmates in federal penitentiaries in 1977 concerning the age at which they had left home and the age at which they were first arrested. The responses indicated that "75 per cent of all the Métis, 76.1 per cent of the Non-Status, and 66.1 per cent of the Status Indians had left home on or before age 16...81 per cent of the Non-Status, 33 per cent of the Métis and 67.27 per cent of the Status Indians had been first arrested under age 16."[2]

Changes in educational policy also brought Indian children to white towns and cities. In the late 40s and early 50s, the residential schools were largely replaced by urban education, and foster or boarding homes for Indian children. The Métis students often lived in shanty towns on the outskirts of cities in the plains. Children of Indian ancestry found themselves in an alien, hostile environment, both in their white foster home, and at school. It is understandable that children with no support but from their confused young brethren should be a prime target for state custody and imprisonment. Under present federal and provincial legislation, children can be placed in the "care" of the government, and incarcerated if deemed necessary; the grounds for such intervention

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go far beyond the concept of crime as it applied to adults, and include such categories as unmanageability, incorrigibility (or incapable of being reformed), truancy, and sexual immorality. Many Indian children on their own in the city have been so labelled, and have found themselves before the courts. Children have no automatic right to a lawyer, nor the right to remain silent; the usual courtroom procedures, such as establishing guilt or innocence under regulated procedures, are waived, and replaced with an informal approach designed to determine what is "best for the child" but with the full force of state sanction behind it. Under these conditions, the numbers of Indian juveniles coming before the family and juvenile courts, and being detained by state institutions has dramatically increased.

Recent statistics bare the harsh truth.

> "In Manitoba, as of June 31st 1977, there were 927 Status Indians in various child care agencies, representing about 25 per cent of the whole juvenile population. These figures refer only to Status Indians, and only to those in placement under the Child Care Act. They do not include Juveniles under the authority of the Juvenile Delinquents Act. In Ontario, as of May 31st 1977, there were 377 wards of Native descent, and about 300 on probation, representing about 25 per cent of the total. In British Columbia the proportion is as high as 40 per cent. In Alberta, no records were kept as to the racial origin of Juveniles."[3]

An informal survey conducted in 1975 by the Native court workers in Alberta juvenile courts noted that as high as 50 per cent of the children appearing in court were Native.[4]

The Crime Commission report, from which the above quote was taken, goes on to warn that: "All these figures are very high, considering the low proportion of Native people in the population as a whole, and should be a matter of great concern given the number of Native people now in Adult institutions, both Provincial and federal, who have this type of background."[5] In other words, if conditions remain largely the same, we can expect an escalation of adult Native imprisonment in the years to come.

To fully understand Indian conflict with white law, it is necessary to scout far beyond the confines of recent history. We must look to the alien nature of European-styled justice as it applies to the traditional Indian justice approaches. A system of justice evolves naturally, or independently, in accordance with the history, religion, environment, political structures, and values of a particular society. As is hopefully readily apparent in the sections of justice of the Indian tribes, a wide variety of approaches emerged over the centuries which related to all aspects of life in each tribe. It is possible to interpret these many forms of Indian justice in terms of four basic types, according to the economic base of specific tribes.

The hunting societies of the migratory Athabaskan tribes of the northwest forest, and the Naskapi/Montagnis in the east, had but few laws essential for the benefit of the group. They had, however, a strict code for the individual based on the local religious beliefs. In both areas, the family units were scattered across the hunting grounds, so that complex laws were both unnecessary, but also extremely difficult to enforce. Violation against a law of the community rarely received a reaction as extreme as execution, even where murder was concerned. Life was very harsh in these isolated pockets, and was therefore, precious. The death of a hunter could result in the demise of his family. It would effect the welfare of the community as a whole.

The plains Indians also possessed migratory hunting societies, but the buffalo herd was the main source of all food and goods. Rather than needing to spread out in small groups to obtain their food, as in the other hunting groups, the plains nations had to come together in sizeable hunting parties to obtain the year's staple supply. At times thousands convened at the summer camps. The Prairie tribes had natural or individual styled justice during the winter, similar to their other hunting brothers, but their huge summer villages required temporary laws strong enough to protect the tribe against stampeding of the buffalo herds and the ensuing mass starvation. Thus, these tribes evolved warrior societies who acted in the capacity of police. The elected chiefs had much more influence during these summer gatherings, and enacted the temporary laws needed to maintain the peace and preserve the greater community during this essential cycle.

The coastal tribes obtained much of their food from the sea, and thus tended to have more permanent settlements than the tribes mentioned thus far. The chiefs had a more stable and greater power and intervened in disputes of a criminal and civil nature more often than in hunting societies. In the west particularly, society was much more structured, and had a rich number of rules for each grade in the community. The concern over loss of status and respect in these settlements provided a built-in incentive for observance of societal rules.

The agricultural societies of central North America established substantial, permanent towns. The complexity of life for these tribes required more pervasive rules for all members to live by. The Iroquois, for example, created a league and constitution for the preservation of peace between and within communities in the region. They possessed an intricate and effective system of selection of their joint government, and protection of the abuse of the considerable power placed into the hands of the Sachems. Preservation of peace and good will was so compelling within the Six Nations that restitution and compensation were the usual approaches to violation of the laws of the confederacy. The clan directly paid for an offence, not the individual, being similar to several west coast bands in this respect.

In all tribes, the exercise of power by the political and economic leaders was tempered by the frequent and potent expression of public opinion on how a matter was to proceed. In addition, the family was the basic social, economic, and political unit and the main source for inspiring and restoring peace. The individual was expected to maintain self-control for the spiritual and physical well-being of his or her community.

The laws of Canada are founded on a modified version of British common law and principles. The roots of the British system spring from the feudal system, a central government under rule by a Monarch, Christianity, and the Protestant work ethic. It is possible to generalize about the difference between Anglo-Canadian law and the common basics of traditional Indian justice.

Anglo-Canadian Justice	**Traditional Indian Justice**
-laws formulated by elected representatives.	-laws formulated by the community through tradition and consensus.
-laws tied to man-made economy and therefore complex and numerous.	-laws tied to the natural environment; only a few universally condemned actions in Indian customary law.
-Protestant Ethic and Christianity the moral foundation of the law.	-traditional Indian religions the foundation of Indian codes of behaviour.
-personal offences seen as transgressions against the state as represented by the monarch.	-personal offences seen as transgressions against the victim and his/her family; community involved only when the public peace threatened.
-law administered by representatives of the state in the form of officially recognized or operated social institutions.	-law usually administered by the offended party, i.e., the family, the clan or the tribe, through a process of mediation or negotiation.
-force and punishment used as methods of social control.	-arbitration and ostracism usual peace-keeping methods.
-individualistic basis for society, and the use of the law to protect private property.	-communal basis for society; no legal protection for private property; land held in trust by an individual and protected by the group.

European, Hudson's Bay Company, and Canadian legislation has been a tool for non-Indian interest groups to establish and control their base of operations in the "New World". The indigenous people of this land were at first used as armies for these interests under the guise of common aims; traditional Indian justice was left largely intact. When the dust settled after the final battle and the winner was declared, all Indian nations in the British colony were stripped of much of their powers of self-government.

Proclamations and laws issued by the Crown and her representatives undercut Indian sovereignty, British jurisdiction being taken and upheld by the military throughout the central wood lands, and the east coast. The vast terrain of the northwestern half of the British colony was granted to a business monopoly with rights to impose self-benefiting laws for generations upon the inhabitants therein. Empty bellies and diseased bodies forced the tribes of the plains and north to make treaty. Special legislation effectively ran roughshod over any thoughts the tribes might have had of outcry or independence.

The price of defiance of British law and government was paid repeatedly by the Indian nations: the French allies in the east, the central tribes who rebelled under the able leadership of Pontiac, and the Métis and Cree who voiced their mistreatment at the hands of Canadians were silenced by the military and the police. In effect, most of what is now Canada was seized by threat or use of brute force, and British law became the new rule of the day.

The laws of Canada are based, on the whole, on the needs and morality of 19th century Englishmen, before Indians and women could vote, and before French Canadians had broken the bonds of being a defeated people. The Criminal Code is a notable example. Prior to Confederation, English criminal law was imposed as it existed with each successive takeover of parts of North America; after 1867,

> "that mass of criminal law remained in force but now the amending power was transferred to the newly created federal government. There was therefore at that stage no unified system of criminal law in Canada, save insofar as it all started with a common law base....In 1892, after some five years of study the 'Bill Respecting Criminal Law' was introduced by the Attorney-General of Canada who stated that it was based upon the English Draft Code as presented in 1880, on Stephen's Digest of the Criminal Law (1887 ed.), Burbidge's Digest of the Canadian Criminal Law (1889 ed.) and the Canadian statutory law."[63]

Ironically, the British Code was not enacted by the British Parliament although it was presented twice in the form of a Bill, and yet it was a major base for the 1892 Canadian Criminal Code.

The implications of our Canadian Criminal law being founded on British common and statutory law are considerable.

> "The historical development of the criminal law of England is not one of logical analysis. That part of it that was developed by the judges doubtless originated in their views of what was morally reprehensible and, in their view, therefore socially harmful, while that part of it represented by statute law as enacted to meet ad hoc situations that were felt to be in need of remedy. It is not surprising that, as a result, criminal law was viewed as a code of substantive law incorporating concepts of moral fault as well as concepts of social harm. Many criminal offences had their origins in religious laws while many more were enacted to preserve the social and political advantages of those who were dominant in society. The result was no more than an ill-defined and ill-assorted hotch-potch of more or less repressive penal measures."[7]

The use of non-Indian laws has been a thorn in Indian/white relations since the time of early contact. Legislation has been used to control every aspect of Indian life and death. Law has barred Indians from political franchise, if the tribes wished to maintain the Aboriginal rights supposedly guaranteed them in treaties and proclamations. The Indian Act has been used to ban Indian ceremonies, religion, self-government, and political lobbying and alliance. Freedom of movement was virtually destroyed through what was in fact an illegal pass system, upheld by the NWMP and the Indian Affairs Department. Legislation and treaties have been obeyed by white authorities when it has been to their advantage, and openly defied when not (the building of the CPR through Indian territory is an apt example). Special offences for Indians, including possession of liquor and conducting a specific traditional ceremony, were in effect until very recently.

Administration of the law against Indians has been conducted in a fashion that would have appalled anyone believing in the principles of British justice. A group of English businessmen were granted a Royal charter empowering their employees to administer justice in their New World thousands of miles away. Indian Agents, the supreme commanders of reserves, were given the right under law, and the encouragement under policy, to act as justices of the peace for their charges while at the same time receiving half of any fine as their payment. The NWMP were empowered for 30 years to arrest, try, imprison and execute the inhabitants of the plains.

And yet, some Canadians are still surprised when the Aboriginal people of Canada express contempt, and even hatred for white law and its enforcers.

The relationship between Indians and Métis, and the white justice system has always been one-sided. Laws have been imposed upon the Aboriginal people of Canada without consultation or concern that the law incorporate their traditions, values, and sense of what is just. The laws of Canada have not been used to protect

Indians and Métis as part of the fabric of Canadian society, but rather to protect the interests of white society alone. Many Indian and Métis people have a disrespect for Canadian law because it is white law.

The Indian and Métis conception of what constitutes an offence, what should be considered as serious, who should judge the offence, the meaning of guilt and innocence, what a sentence should be, differs dramatically from the perception of the Canadian judicial system. Justice in Canada is often confusing, irrelevant, and repugnant for the indigenous population. Special offences under the Indian Act and its predecessors have further defied the principle on which Canadian law is purportedly based: equality before the law.

The legal philosophy, the offences, the court procedures, and the mode of law enforcement are often incomprehensible for persons with such a different heritage as Indians and Métis. On most reserves, a person is still free to walk into a house or shed and sleep; in the city, such an action is considered to be Break and Enter, and an Indian admitting to such an offence often finds himself behind bars. In isolated settlements, a Native might borrow a gun or other article without permission, perhaps indefinitely, with the blessing of the owner if the borrower is in need. In white communities such as action is seen as theft. In remote communities, a citizen might be called upon by his chief and council to punish an offence against the traditional code. He might suddenly find himself sentenced by a Canadian court as a criminal, when he had only come to the aid of his community. In other cases, an Indian might commit a violent act, even murder, against another Indian, and be given a light sentence by a white court; if left to traditional justice, he would have received a much harsher punishment. When appearing in court, the accused Indian often pleads "guilty", not realizing that pleading "not guilty" does not indicate that he did not do the action, merely that the state would be unable to prove it.

Ignorance of the law, inability to communicate in English or French, poverty (inability to pay fines), lack of education, further add to the disadvantage of the Indian and Métis person when arrested, charged and tried for a non-Indian offence. These factors also lead to an adverse situation when imprisoned. If an inmate of Indian ancestry is fortunate enough to discover all the rules and regulations upon which prisons and release programs are run, he is often incapable of utilizing them to his advantage, unless given aid. The very notion of imprisonment is a white man's invention.

Discrimination is an illusive spectre. It is difficult to prove, and yet it haunts discussions among Indian people when talk turns to white justice. It could be argued that Canadian law in itself is discriminatory in that it enforces a particular cultural bias. It behooves us to question: who do our laws benefit?

While the police are arresting intoxicated Indians, wealthy companies fill our rivers with poisons, experiencing little more punishment than fines for their destruction of living creatures in and around these water ways. While Indians are being imprisoned for non-payment of fines, many non-Indians convicted of the same offence walk out of court free men because they had money in their pockets. While "the system" tells the Indian that there is one law for everyone, he sees mainly the poor and minority groups in the cells beside him.

Unfortunately it is possible to interpret present adherence to the law by all Canadians as somewhat sporadic at best. Smoking marijuana, tax evasion, driving while intoxicated or without glasses, theft of office supplies and equipment, falsifying expense claims, being a public nuisance or drunk in a public place, are offences under our laws and yet they are violated daily, often without fear of detection or punishment, by certain groups in our society.

We must ask ourselves: how our laws are enforced, and against whom? If we assume that those who inhabit the lower echelons of our society are more likely to commit crimes, attention is often turned to these groups for surveillance and enforcement. This approach is a self-fulfilling prophecy. It stands to reason that if justice personnel believe Indian people commit more crimes, then that is the segment of our society that a large proportion of manpower in crime detection and prosecution will be allocated towards, particularly in urban areas. Indian people are very vulnerable to state intervention under such an assumption. How many white people who believe that Indians are drunken, lazy degenerates see only the Indian in the gutter and not the 10 who pass him on their way to work?

> "So long as law-enforcement agencies are subject to the will and desires of middle-and upper-class members of the community but are free to behave as they wish without fear of reprisal toward lower-class members of the community, then the legal system will continue to function in the highly discriminatory way that it now does. This situation will not be altered one iota by changing the educational requirements or socialization process of persons occupying positions in the system. The situation will be altered when and only when the political and economic power of the lower classes approaches that of the middle and upper classes.... Certainly the history of most nations in the modern world does not allow one to be overly optimistic about the possibility of establishing a system of justice that is equally fair to all persons irrespective of their political and economic power."[8]

Discrimination is insidious, but unobtrusive when a group is deprived of equal service through factors beyond their control, such as isolation, or poverty.

"The past, it just crumbles, the future, just threatens". (Buffy Ste Marie)[9] One-half of the status Indian population is under the age of sixteen.[10] (Statistics on non-status Indians and Métis are not available). It is the young person of Indian ancestry who is being imprisoned in crisis proportions; we must fear the same end for the next group of young Native people if they must struggle against the same odds.

Study of the past can teach us many lessons. It can also provide us with the ingredients or forecast for the future, unless major change intercedes. Basic assumptions must be questioned about Canada's law and the administration of justice as it affects Indian and Métis people. The notions that all are equal in the eyes of the law, that the law represents the morality of even the majority of Canadians, that there must be one criminal law for all regions, that everyone receives a fair hearing, that the law is an effective remedy for social economic problems, must all be raised to public scrutiny as never before. But, that will not be enough to stem the tide of imprisonment of Indians and Métis.

Endnotes

1. Hugh Brody, Indians on Skid Row (Ottawa: Information Canada, 1971), p71.
2. Métis and Non-Status Indian Crime and Justice Commission (Serpent River Reserve, Cutler, Ontario: Woodland Studio, 1977), pp137-8.
3. ibid, p125.
4. Chester Cunningham, Alberta Native Counselling Services.
5. Métis and Non-Status Indian Commission, p126.
6. Alan W. Mewett and Morris Manning, Criminal Law (Toronto: Butterworth & Co., 1978), pp4-5.
7. ibid, p10.
8. W.J. Chambliss, Crime and the Legal Process (Toronto: McGraw-Hill Book Co., 1969), p422.
9. Buffy Sainte-Marie, "My Country 'tis of Thy People You're Dying", from her album: Native North-America Child: An Odyssey, 1974.
10. National Indian Brotherhood, Fact Sheet on Economic and Social Conditions for Canadian Indians (Ottawa, 1975), p1.

If the Shoe Fits...

The comments and views of Indian people have been recorded over the decades concerning the behaviour and traits of whitemen, and their treatment of the original inhabitants of this continent. A brief collage of quotes illustrates these opinions.

"You know our practice. If a white man, in travelling through our country, enters one of our cabins, we all treat him as I do you. We dry him if he is wet, we warm him if he is cold, and give him meat and drink that he may allay his hunger and thirst; and we spread soft furs for him to rest and sleep on. We demand nothing in return. But if I go into a white man's house at Albany, and ask for victuals and drink, they say 'Where is your money?' And if I have none, they say, 'Get out, you Indian dog!'"[1]

- Canassatego, an Onandaga Chief

"For," they (the Micmac) say, "you are always fighting and quarrelling among yourselves; we live peaceably. You are envious and are all the time slandering each other; you are thieves and deceivers; you are covetous and are neither generous nor kind; as for us, if we have a morsel of bread, we share it with our neighbour."[2]

- Jesuit Relations

"It is a strange thing", said they (the eastern Indians), "that since prayer has come into our cabins, our former customs are no longer of any service; and yet we shall all die because we give them up....But you are the cause of it: For if you had lived in your own country without speaking to us of God, he would not say a word to us, since we would not know him or his will. You would then do much better to return to your own country and live at rest; for it is you who kill us...every day you are heard shouting for the prayers. It is a strange thing that you cannot remain quiet."[3]

- Jesuit Relations

"For in truth this (Algonkians) is not a nation of thieves. Would to God that the Christians who go among them would not set them a bad example in this respect. But as it is now, if a certain savage is suspected of having stolen anything he will immediately throw this fine defence in your teeth, 'We are not thieves, like you...'"[4]

- Jesuit Relations

"Then (there are) the wars which the French have made among themselves to dispossess one another through their ambition and desire to possess everything; these things the Indians know well, and, when one represents to them that they ought not to rob and pillage vessels, they say in prompt answer that we do the same thing ourselves."[5]

- Nicholas Denys

"Merchants (I mean the Traders with the Indians) are looked upon by them as Liars, and People not to be trusted, and of no Credit, who by their thoughts being continually turned upon Profit and Loss, consider everything with that private View."[6]

- Cadwallader Colden

"The natives...could entertain no respect for persons who had conducted themselves with so much irregularity and deceit."[7]

- Alexander Mackenzie

"The Savages have the most happy Memory in the World. They can carry their Memory so far back, that when our governors or their Deputies treated with them about War, Peace or Trade, and proposed things contrary to what was offer'd Thirty or Forty years ago, They reply, That the French are false, and change their Opinion every Hour, that 'tis so many Years since they said so and so; and to confirm it bring you the Porcelain Colier (wampum belt) that was given them at that time."[3]

- Louis Armand Lahontain

"What has happened to Fred Quilt* is not new to the native people of Canada. Brothers and sisters die every day throughout the nation as a result of the brutal and vicious system of racism and its agents....We must do more than demand legal action. We should not bother ourselves with trying to improve the relationship between the native people and the Mounted Police for that is not a possibility. After all, the official duty of the police is to intimidate, control and keep us in our place. The mounties operate according to their stereotype images of us as savages."[9]

- Howard Adams

(*Fred Quilt died on November 30, 1971, from injuries received two days before during an arrest by RCMP officers in B.C. A controversial inquest and appeal followed. The B.C. Supreme Court eventually found that Mr. Quilt had died from an "unknown blunt force" between the time he was removed from his automobile and escorted into the police car.[10)]

The Europeans and their descendants have been perceived by Indians and Métis as selfish, greedy, noisy, deceptive, dishonest, possessive, materialistic, prejudiced and cruel. It is left for the reader to decide the validity of this indictment, in the light of relations between the two groups.

Endnotes

1. Lewis H. Morgan, League of the Ho-He-No-Sau-Nee or Iroquois (New York: Burt Franklin, 1901), Volume I, p320.
2. R.G. Thwaites, ed., The Jesuit Relations and Allied Documents, Travels and Explorations of the Jesuit Missionaries in New France 1610-1791 (Cleveland, Ohio, 1896), Volume I, p173.
3. ibid, Volume 25, p209-211.
4. ibid, Volume 30, p105-9.
5. Nicholas Denys, "The Description and Natural History of the Coasts of North America (Acadia)", in H.F. McGee, ed., The Native Peoples of Atlantic Canada (Toronto: McClelland & Stewart Ltd., 1974), p44.
6. Cadwallader Colden, The History of the Five Nations Depending of the Province of New York in America (London: Cornell University Press, 1969, p100.
7. Alexander Mackenzie, Voyages from Montreal through the Continent of North America, to the Frozen and Pacific Oceans in 1789 and 1793 (New York: Albertan Book Co., 1922), Volume I, pxxxiii.
8. Louis Armand Lahontan, Lahontan's Voyages (Ottawa: Graphic Publishers, 1932), p222.
9. Lorne and Caroline Brown, An Unauthorized History of the RCMP (Toronto: James Lewis & Samuel, 1973), p154.
10. ibid, p154-164.

Alternatives

"It must be remembered that there is nothing more difficult to plan, more doubtful of success, nor more dangerous to manage than the creation of a new system. For the initiator has the enmity of all who would profit by the preservation of the old institution and merely lukewarm defenders in those who would gain by the new ones."[1]

- Machiavelli, The Prince

Fundamental change must occur in our legal system if we hope to impede the flow of Indians and Métis through our courts and prisons. There are a number of distinct options, but all are contingent upon certain requirements being met for even moderate success.

It is absolutely essential that those who enact and administer the law are convinced of the necessity for our judicial system to evolve. Solutions can only be pursued with the permission and cooperation of those in authority. Dozens of reports, task forces, and commissions (The Archambault Report, the Fauteux Report, the Ouimet Report, the Law Reform Commission briefs, the Parliamentary Sub-Committee Report on Penitentiaries, to name but a few.) concerning justice in Canada have articulated the same essential recommendations amounting to sweeping change in the judicial system if it is to cope with the failure of the system to be just and effective in its vague mandate. The system has become a little more humane; opinions have been aired; but the governments have not implemented policies and legislation that could redirect the nature of our law and legal process.

In the past 25 years governments have been increasing their jurisdiction in legislative powers and administration of legal and correctional institutions. All the changes proposed in the following pages entail the surrender of jurisdiction by government bureaucracies. The formal justice system must learn to share its load with private citizens and groups, and in this instance, Natives.

Historical lessons can evoke another warning in the search for effective solutions. Past experience shows us that programs, policies and laws are likely to fail if imposed on people of Indian ancestry. Often programs implemented solely by Ottawa are as inappropriate as the ones they replace, and at times are disastrous. Meaningful change must be developed through joint Native/government efforts if real innovation and cooperation are be achieved.

One alternative focuses on employment of Native personnel in all parts of the legal and correctional process. Now, the judges, lawyers, police, guards, counsellors, psychiatrists, and parole and probation officers staffing the justice system are on the whole non-Indian. "This fact is not only alienating to the vast numbers of Natives processed through the system, but increases the possibility of misunderstanding and discrimination."[2]

Judges, for example, are largely drawn from the professional, Protestant sector of Canadian society. J. Hogarth in his study Sentencing as a Human Process, noted that "(i)n a variety of ways it was demonstrated that magistrates interpret the world selectively in ways consistent with their personal motivations and subjective ends."[3] In exercising his discretion in sentencing a convicted Indian, a judge is often affected by his own perception of the offence and the offender's ethnicity. Discretion exercised by police and prosecutors concerning decisions to arrest and charge are also affected by their own life experience. This potential bias is particularly worrying when one considers that the vast bulk of arrests of Native people are made by non-Native police forces. (The Métis and Non-Status Crime and Justice Commission discovered that almost 99 per cent of their significant sample of Native federal inmates were arrested by police officers who were not band constables).[4]

The decision to arrest, warn or refer, to charge with the lesser or greater offence, to discharge, fine, confine, to place on probation, to classify inmates as minimum, medium or maximum security, and to parole, are made at the discretion of a few individuals on behalf of society. Effective use of discretion is based upon sound personal knowledge on the part of the decision-maker of the life experiences of the person at his mercy, and, thus, the danger he may pose to others or himself. In addition, diverting persons away from any point in the justice system is contingent upon the perceived or actual availability of alternative resources. Furthermore, those persons who are rural-based, as are much of the indigenous population, are at a considerable disadvantage in our centralized system; most resources are found in major centres and staffed by urban dwellers.

The inclusion of Indian and Métis staff during each phase of the judicial process increases the likelihood of effective and fair use of discretion. An Indian police officer, for example, might take advantage of the authority structure on the reserve, and present a first offender to his elders for informal supervision, rather than arresting him. He might be more inclined to make use of Native alcohol counsellors and programs, Friendship Centres, and Native outreach projects by the simple fact that he knows they exist. The heritage, life-style, and problems that the Native person in conflict with the law possesses are fully understood and often shared by Native staff, particularly within a tribal region. Use of Native volunteers in sentencing, institutional programs, and probation and parole supervision would be a likely extension of such an awareness. Non-Native staff might learn to modify their attitudes through exposure to a number of Native colleagues, and thus Native employment might have wider repercussions for equitable treatment and decision-making throughout the legal process.

Formidable educational requirements often prevent even the most experienced of

Native candidates from being hired. Any serious effort to employ Indian and Métis people as justice personnel must de-emphasize formal schooling, substituting appropriate life and work experience. This may be accomplished through the creation of special positions, such as the special constables, and assistant parole officers, with the possibility of upward mobility as experience and credibility increase. Equivalency clauses in job requirements may specify the amount of work experience necessary in lieu of a university degree in order to increase the number of eligible Native candidates. Special bursaries and pre-employment and in-service training programs sponsored by the employers are other options open to increase Native staff. Separate and equivalent units in justice services staffed by and serving Natives could be instituted in areas with high Native caseloads. Affirmative action programs, whereby persons of Indian ancestry are favoured in serving in their own people, are another method of closing the employment gap. In all of these approaches a combined government/Native effort is needed if qualified Indian and Métis people are to be identified. Not too many rural people read The Globe and Mail.

Native organizations can be contracted by governments to determine many of the services required by native accused and convicted persons. Native "clients" are often more inclined to trust and communicate with Native staff who are working for a private Native organization, than they are for government employees. However, it is also essential to employ Indians and Métis in the system, particularly at management levels, if policies and programs are to meet the needs of the Native persons in trouble with the law.

Having already indicated the advantages of employment of Native people in the system, discussion of the drawbacks is in order. Indian personnel are subject to both the policies and direct supervision of non-Indians, and the expectations of their own people. This often results in difficult, and at times, intolerable conflicts for the employee. He may follow his employer's orders and directives against his better judgment, and lose the trust and cooperation of the person he is trying to reach; or, he may neglect his superior's directions and be reprimanded or shunned by the rest of the staff. Many Native employees are unhappy in their positions under such circumstances, the pressures frequently necessitating retreat from the perspective and support of Indian people, or leaving the job altogether.

There are a number of options that can reduce this polarization and alienation. Unsuccessful placement of Native employees in prisons, most notably the 1970 Kingston experience, provide certain lessons. Native staff are often isolated or ostracized, being the only Indian person in a whole office or institution. Employees in such situations are frequently demoralized under the strain of being alone in their responsibility. Care should be taken to hire a minimum of two Indian persons in any one division for mutual support and advice.

Contracting Native people from private groups alleviates conflicting demands somewhat, but these people are still subject to non-Native authority. The principles and procedures of the justice system remain largely unaltered by employment of Native people; justice merely becomes more palatable. There is little opportunity for more traditional Indian methods of defining and handling problem people.

There are other ways of involving Native people in justice that do provide opportunities for Indian heritage to be reflected in the law and its administation. There are two principle options open to Canada in pursuit of Indian-based justice. Diversion and social service programs provide one direction: an informal commmunity-based Indian peacekeeping. Alternatively, the Tribal Justice model of the United States could be adapted for Canadian use, based on a formal recognition of the right for bands to create and administer laws within a specified jurisdiction.

The formal recognition in policy and legislation of Indian band powers over minor criminal and civil incidents is an idea that is gaining attention and popularity among Indians in Canada. The concept of Indian-run community courts or "Peacemakers' Court" was proposed by a number of Native organizations, and was recommended by workshops on the Administration of Justice in Remote Areas and the Courts in Rural Areas at the national conference in 1975. The judicial powers of the tribes south of the border are frequently cited as an approach with some applicability to Canada. A cursory review of the development of tribal laws and courts in the United States sheds some insight on the subject.

In 1817, the General Crimes Act stipulated that the federal criminal laws would be applied to Indians committing offences against non-Indians. In the cases of an offence of one Indian against another Indian, or where the Indian had already been subjected to the tribal law, the government had no jurisdiction.[5] Gradually legislation was enacted by Congress that placed ever-increasing restrictions upon Tribal Justice. The Major Crimes Act, beginning in 1885, specified a number of serious offences committed by one Indian against another that could only be tried in federal courts. Crimes such as murder, manslaughter, rape, assault with intent to kill, burglary, and incest were thus removed from the jurisdiction of the tribes.

Around the time Canada prohibited certain Indian ceremonies and dances, (the late 1800s) the United States government was also attempting its own version of exterminating "undesirable" Indian customs and institutions. In 1883 the American Commissioner of Indian Affairs created courts of Indian offences which were to try persons charged with performing the Sundance, practising traditional medicine, and other similar "offences" against white morality.[6] Ironically, the courts created by the Indian agents were staffed by Indians, and were the seeds out of which a Tribal Justice system would flower. As these courts broadened their scope, the question of jurisdiction gradually came to a head. In 1934, the Indian Reorganization Act marked a new era. The Act allowed tribes to set up their own governments, constitutions, codes of law, and tribal courts. "Each tribe was required to vote whether to accept or reject the Act, and between 1934- and 1936, 181 tribes accepted it while 77 rejected."[7]

The government-drafted model code of the 1930s continued to be adopted by tribes, even though under the Act innovative codes enacted by tribes could replace the old penal code. As some tribes became more experienced, laws were revised or completely rewritten.

Some tribes lost their jurisdiction over civil law and most criminal offences through Public Law 280 of 1953. Most tribes in five states became immediately subject to state criminal and civil jurisdiction, and a number subsequently. It was not until the Indian Civil Rights Act was enacted in 1968 that the consent of the tribe was required before judicial jurisdiction could be transferred to the state; also if the state and federal governments and tribes agreed, legal jurisdiction could be restored to the tribes and the federal government.[8]

Under the Indian Civil Rights Act, all civil rights accorded to other Americans, except the right to bear arms, are to be recognized and respected by Tribal Courts. Sentences by Tribal Courts are limited to six months in jail and $500. In 1974, the Bureau of Indians Affairs reported that 63 tribal, 16 traditional and 32 courts of Indian Offences were operating in the United States.[9]

Critics of the Tribal Justice system include American Indian people. They state that the courts and police are often a tool for powerful families, or a corrupt tribal council on a reserve to consolidate their positions. A number point to the tendency for some courts to become more and more adversarial, in part through government pressure and legislation, and in part, through a near-sighted acceptance of the white justice model.

Those who support the concept and the practice of tribal courts in the U.S.A. remark on the unique features that have emerged from Tribal Justice. The codes enacted by tribes generally contain far fewer offences than equivalent state codes. Tribal codes usually have 40 to 50 offences, as compared with between eight hundred and two thousand offences in state codes.[10] The form of punishment is usually a required amount of labour for the benefit of the tribe or the victim, as opposed to imprisonment. Tribal codes typically have no minimum sentence, allowing for the circumstances of the offender and the crime to be taken into account. Tribal penal codes usually do not contain vague offences found in state codes such as vagrancy and conspiracy, under which unpopular individuals could be convicted.[11]

Proponents of Tribal Justice also note that the local nature of the codes, often publicly revised on a regular basis, allows for tribal values and customs to be incorporated. More essentially, Tribal Justice means a feeling of respect, ownership, and validity on the part of those who live under it. Mistakes in the development of Indian law and courts are their own, but so are the successes.

It is interesting to note that American policy and legislation concerning tribal courts and laws were all based on the same premise: that the Indian tribes of the United States have inalienable powers of self-government, commonly referred to as Indian sovereignty, which can be reduced but not erased. In part this position was established through the long-term assignment of Indian affairs to the military. The military appear to have had little concern over internal matters of the tribes, their primary interest attached to external relations. The British favoured civil administration of Indian tribes, with the subsequent restrictions on every aspect of Indian Affairs. The Canadian government has come to believe that Indian nations are charges of the government, with, few, if any, inherent Aboriginal rights. Governments in Canada therefore feel perfectly within their rights to demand extinguishment of any Aboriginal rights and claims forever when negotiating treaties such as the James Bay Agreement. Ironically, the very act of negotiating treaties with tribes is a recognition of Aboriginal land rights.

It is arguable that certain rights bestowed under the Indian and British North America Acts could enable bands to increase their legal sphere to the extent that Peacemakers' Courts for minor offences could be created without significant legislative changes.

The Ontario delegation at the Edmonton Conference on Native Peoples and the Criminal Justice System stated in their brief to the conference delegates:

> "An Indian who is alleged to have committed an offence on a reserve shall have the choice whether he wishes to appear before the usual provincial courts or before a special Indian tribunal known as the 'Peacemakers' Court'. Where the accused has an election under the Criminal Code, and one of his options is the Provincial Court, then the 'Peacemakers' Court' shall be an alternative too. Where the accused has no option, such as a charge of murder, the 'Peacemakers' Court' would have no jurisdiction. The 'Peacemakers' Court' would be composed, for instance, of three members of the band who would be respected by everyone. The procedure would be informal, and would take place where necessary in the native language of the band. The emphasis in the proceedings would be on a less formal and legalistic procedure. Reconciliation and compensation would be the central objectives of the court; settling problems with the community as well as punishing offenders. While the jurisdiction of the court would be the same as that of a Provincial Court, it would also fulfil the function of a Family Court in its ability to deal with family matters and with juveniles, and would be able, on an informal basis, to settle matters on a civil nature between band members where both parties submit to the court's jurisdiction. This type of traditional court would reflect the values of the community and would enhance the pride of the group through its emphasis on internal settlement of internal problems".[12]

In a discussion paper by the New Brunswick Indian Rights and Treaty Research

Committee, reference was made to legislation which could be used to furnish bands with some judicial rights and responsibilities. The Committee noted that the BNA Act, Section 101, stipulates that the Parliament of Canada may "provide for the Constitution, maintenance, and organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.[13]

Coupled with the possibility of a federally created court on reserves under the BNA Act, the Indian Act, RSC1970, cl-6, section 107 allows the Governor-in-Council to appoint persons as justices of the peace, having the authority of two J.P.s with regards to offences under the Indian Act, and "any offence against the provision of the Criminal Code relating to cruelty to animals, common assault, breaking and entering and vagrancy, where the offence is committed by an Indian or relates to the person or property of an Indian.[14] By this allowance the federal government could appoint an Indian justice of the peace to oversee the newly created court. The Committee summed up the argument by stating:

> "Indians can actually have the right to administer justice within the confines of the Indian Reserves. The Indian Act, its regulations, its by-laws, treaty provisions, etc., all come within the scope of 'Laws of Canada' as designated in Section 101 of the BNA Act....Furthermore, because of the incorporation of provincial laws under s.88, their jurisdiction could be extended to include enforcement of provincial laws on Indian Reserves. The monies that are and would be collected which result from such enforcement of the above laws would help to finance part of the cost of the courts."[15]

Some bands across Canada are contending that they have untapped rights under the Indian Act that could empower bands to pass by-laws which could supersede provincial and even federal law. Under Section 81 of the present Indian Act, it is allowable for bands to pass bylaws on a number of concerns, including "the observance of law and order", "the prevention of disorderly conduct and nuisances" and "the removal and punishment of persons trespassing upon the reserve or frequenting the reserve for prescribed purposes".

In addition this section allows for "the imposition on summary conviction of a fine not exceeding one hundred dollars or imprisonment for a term not exceeding thirty days, or both, for a violation of a by-law made under this section"[16] under band authority. (The Minister of Indian Affairs can veto any band by-law within 40 days after a copy is forwarded to him).

The potential appears to exist for a restricted use of Indian courts under present legislation in Canada. As already noted, this approach could only be attempted with the consent and support of the government, and in particular the Minister of Indian Affairs.

The rarity of attempts and court cases surrounding the questions of band powers, Aboriginal rights and jurisdictional powers has created a cloud of uncertainty around the whole issue of tribal sovereignty and justice.

Legal clarification could be promoted through a carefully staged set of court cases specifically debating each legal question. Can a band pass a bylaw that contravenes a provincial statute or regulation? Would the Indian Act override provincial law in case of such a conflict? The BNA Act clearly states the exclusive responsibility of the federal government over status Indians and their land. If the court found in favour of even minimal band rights in expansion of bylaw concerns, it would then be possible for bands to attempt a Peacemakers' Court on safer ground.

Another tactic, in addition to or instead of testing present legislation, involves changing the Indian Act, and perhaps even the Constitution, so that band judicial powers are clearly and specifically outlined or expanded. The Indian Act itself is reportedly undergoing revision and this issue could be easily incorporated. Moreover, modern treaties and agreements could be utilized as an opportunity to negotiate Indian Aboriginal rights concerning the right and occasion to judge their own people.

We cannot expect, at this point in time, that Canadian Indian bands can achieve the degree of independence in legal matters that many of the American tribes have. There are several differences between the two countries in addition to government views of Indian self-government. Division of powers between the federal government and individual states or provinces varies considerably between Canada and the United States. Size of reserves is another factor, the reservations in the United States being much larger, more heavily populated, and thus better able to support a semi-separate judicial system, in both financial and human resources. Canadian Indian nations are sub-divided onto small parcels of land, unlike most American tribes. Canadian Indians are divided by legislation into status and non-status Indians, or more basically, legal and illegal Indians. An Indian court system would only be allowed to serve a part of the Indian population in this country. On the American side of the border Indians are judged by blood quantum, not legal requirements.

Lessons can be learned from the American experience in tribal courts and absorbed into a modified version of Peacemakers' Courts. Indian courts could be more carefully introduced in Canada, such that training courses for Indian judges, court staff, lay advocates and prosecutors, could be considered and implemented at the beginning. In the United States this lack of training crippled the court system until the American Tribal Court Judges' Association began sponsoring courses. At present Canada's version of Indian community courts would be introduced with high visibility; Indian bands could not afford the costs, both political and human, of poorly administering their new judicial responsibilities.

Care must be taken to develop a strategy for Indian courts that would ensure incorporation of the local band's heritage and techniques for conflict resolution. A model code designed by the government would be a tempting source of legislation for bands, as it was for tribes in the United States. Instead, the option(s) employed by Indians and governments should emphasize the need for diversity, and be structured so as to encourage different approaches. Those who traditionally had few laws and an informal way of handling unacceptable actions should be able to exhibit this practice in their own Peacemakers' Courts. Some may wish an elder's council to administer justice, while others with a tradition of a significant Indian government involvement in disputes may feel more comfortable with a highly regulated system. If the bands obtain some rights to administer justice, legislation, regulations and policies should envisage a wide range of options.

Concern over use of Indian courts and police as an extension of power by corrupt families or band councils, as in the American context, could be somewhat circumvented in Canada by a novel approach already being experimented with. The Dakota/Ojibway Tribal Police Commission, serving eight reserves in Manitoba, is an approach that warrants close attention. Reserves with geography, heritage or language in common could band together in a similar manner through regional commissions responsible for establishing and monitoring Indian justice facilities and services. There are several advantages in a model that advocates joint administration by a regional band supported organization. The costs of administration, training and staffing would be minimized by lessening duplication. Where one small reserve might be barred from attempting an Indian court system by its size, it might be furnished with the means to operate a local version of Indian justice through cooperative efforts. The influence of local band politics would be held at bay as the governing Indian justice authority would be partially outside of the band. An individual could appeal to this commission if he felt unduly harassed on his own reserve, or if he wanted to appeal his conviction or sentence. On small reserves, most families are related by blood; this closeness represents unique problems in administering justice. The painful requirement of having to arrest, try or punish a relative could be minimized by the commission model. Personnel could be placed on a neighbouring reserve, where the language and culture are the same, but the inhabitants different.

Several benefits would flow from acceptance of an Indian court system. Courts on reserves would provide for a more immediate, accessible trial. Discretion concerning arrest, bail, charge and sentence would be mainly in the hands of the Indian people in the case of less serious offences. The courtroom procedure could be less formal and the background of the offender and his community could be taken into account. The concept of Peacemakers' Courts in Canada could restore respect for the law and its administration on Indian reserves because Indian people would be part owners.

As with any proposed solution, the concept is not perfect; there are some serious drawbacks to formal Indian justice. Subjection to local Indian interests, and the power of the government to circumvent any laws they do not approve of have already been touched upon, and in part answered. The complexity of Indian criminal and civil jurisdiction could further complicate an already staggeringly complex division of judicial responsibilities among the levels of government. An Indian person would be required to be familiar with not only federal, provincial, regional laws and regulations, but also band bylaws which could seriously restrict his or her freedom. It is possible for an Indian to be convicted of a band bylaw that defines an offence not specified in other legislation. Such a conviction could be considered an infringement of rights, or discrimination.

The formality of the Indian Court concept can be seen as a drawback itself. Formal judgments and written regulations are non-Native concepts, the idea of a legally-constituted court being itself at odds with most traditional Indian models. Furthermore, the option of such an Indian judicial system is possible only on reserves; as many as one-half of status Indians live off reserves. In addition, the sizeable numbers of non-status Indians and Métis, approaching as many as three-quarters of a million people, would be ineligible for such an approach. There is yet another course that could be explored in addition to or instead of the Peacemakers' Court model that would take these difficulties into account: diversion.

Diversion is a term which has many meanings. In principle, however, diversion involves the use of other options instead of the formal criminal justice process in handling persons in conflict with the law. Opinions vary as to the parameters of diversion. Some, such as the Law Reform Commission, advocate the inclusion of alternatives to imprisonment in the concept, as well as community absorption or settlement of problems prior to police intervention. Others maintain that diversion can occur only up to the actual trial stage, and that alternatives to imprisonment are in fact sentencing options. Some would include as diversion government operated endeavours to provide alternatives to the normal justice process; others maintain that only privately run programs can be considered as diversion. Most agree that an offence must occur for extra-judicial intervention to be termed diversion; any community involvement prior to an offence is seen as prevention, or by some, as illegal intervention.

The rationale for adoption of informal and formal diversion can be expressed both in the general context of legal reform and its singular advantages for Indian and Métis communities.

Much of the crime committed in Canada is of a minor nature, and the full force of the law is often thought to be unnecessary, and even unjust. The Law Reform Commission states that "...restraint in the use of criminal law is demanded in the name of justice. It is unjust and unreasonable to inflict upon a wrong-doer more harm than necessary."[17] Proponents of diversion point to the fact that the legalistic, adversarial court procedure is at times unable to deal with the underlying causes of the offence in question. Minor offences such as those associated with chronic conflict situations involving a neighbour, drug and alcohol abuse and addiction, and minor property theft or damage, are often best handled through informal intervention by the community, proponents of alternatives argue.

In the formal justice process, both the victim and offender are minor actors in the courtroom drama; the ritual of the trial is enacted through legal representatives for the opposing forces of the offender and the state or government. In contrast, diversion programs entail a human process which is allowed to run its natural course if the solution poses no danger to the individual or the community. For example, with the aid of an intermediary, an offender might agree to repay the victim through return of the good, reparation of damage, or part-time work for the victim or the community.

Studies in the last decade concerning hidden or unreported crime provide further justifications for alternatives outside of the legal process.

> "In addition to the humanitarian and pragmatic motivations behind the movement to reduce offender involvement in the criminal justice system is a relatively newer rationale that derives from the recognition that crime control efforts, from the definition of crimes to the selection of offenders for criminal processing, are discriminatory the system works to the clear disadvantage of the lower classes and the poor. Studies have indicated that criminal behaviour is fairly easily distributed throughout all social classes, yet it is the poor who fill the jails and prisons....The criminal justice system has long been used for providing services, however inadequate, for those who cannot afford to purchase them."[18]

When one considers the growing number of Indians and Métis who are sentenced to prison for minor offences and non-payment of fines diversion becomes a significant alternative. In general, people of Indian ancestry are charged and convicted of a select group of offences including liquor violations, offences against the Highway Traffic Act, theft, public nuisance, break and enter, and assault. Indian-operated programs could be geared to deal with some or all of these situations. The wealth of choices in diversion programming is overwhelming.

The type of program designs would be dependent upon local needs, size and the racial or ethnic mixture of the community. The diversion model adopted would draw upon and enhance the established, traditional base for resolution of minor conflicts in the reserve or settlement. The number, nature, and scope of other social services available would affect the type of project to be founded, particularly in determining whether the emphasis should be placed on direct service or referral to other agencies.

On reserves and in remote Métis colonies, time-honoured values and authority figures are still operating. Elders councils could be created to arbitrate or mediate disputes of a minor nature between members of their community. Informal hearings could take place before these respected elders, who through their influence could either state what they would see as a fair settlement to the trouble, or bring the two parties through advice and mediation to an agreement acceptable to all. Traditional forms of settlement, such as fines, restitution, compensation, and public chastisement could be utilized. In communities with a strong spiritual base, religious leaders could play a role in such an endeavour. Through sessions with the wrong-doer and his victim, the laws of the Great Spirit and the consequences for improper behaviour could be emphasized; the passions of remorse, and forgiveness could aid in settling the trouble peacefully.

Hereditary chiefs, in such tribes as the Huron and Iroquois, could invoke a long-standing tradition of respect and obedience. In communities where the elective system has popular support, the band council could form a panel to deal informally with justice problems on the reserve. In communities where the clan system is still a recognized force, clan or family heads could negotiate disputes between and within their membership to restore peace to their daily lives; ancient methods of settlement such as the potlatch on the west coast could be utilized.

Options to government courts are more elusive in the urban setting. The Native sector in cities is much more mixed in tribal persuasion, and legal status. Although the Native population tends to congregate socially in one particular section, their homes are often scattered throughout the city. Store-front operations in the downtown core, and justice committees sponsored by a local Friendship Centre, are the kind of activities more likely to reach the urban Native person in conflict with the law. Court workers could take the responsibility of aiding in the screening of individuals of Indian blood out of court to urban operated diversion programs.

Regardless of the size and type of community in which Native people live, the indigenous population could nominate representatives to an all Native or mixed justice council. The notion of justice councils emerged in British Columbia in 1974 and was designed to provide a vehicle for citizens to have a voice in the immediate and long range development of policies and programs in the legal field.[19] In some locales, all Indian justice councils discussed and initiated diversion and sentence option projects.

The seeking of alternatives by Aboriginal people to the rigid court process can be embodied in the concept of diversion. The idea is flexible, even in definition, allowing for a creative growth in ability and facilities to handle internal conflicts. Diversion projects can exist in any size or mixture of population, and can highlight any cultural perspective. The Huron, the Naskapi, and the Carrier could all possess informal options to government justice founded on local morals and customs. In some cases, actions classed as minor offences by the white justice system, such as public nuisance, vagrancy, and entry without permission, may be de-emphasized or be of little concern to some Indian settlements. Through informal Indian networks, customs embedded in a band's heritage could be upheld. Public sentiment may be expressed, for example, to a young hunter who was selfish and did not share his meat in the prescribed fashion as dictated by his ancestors and elders. He might be chastised in front of his community for his mistake by a group of respected elders.

Much debate has occurred among government departments and the legal community concerning the legality of diversion. Opponents of diversion note the absence of any legal foundation allowing for an offender to be handled by any other body but a legally- constituted court. They argue that civil liberties and legal rights to due process are threatened by community-spawned alternatives to a trial and conviction under our carefully balanced legal process. Intervention in a person's life should only occur under strict rules of procedures and safeguards, some protest.

One could note that the concept of the law protecting civil rights is an ideal, not the reality. Informal diversion occurs every day in our judicial system, where non-Native police, prosecutors, judges and parole boards assess possible courses of action concerning persons brought to their attention. The inordinate numbers of Native people who are fully processed by the system suggests that decisions by white authorities are not usually to the advantage of the Native person. It could be argued that civil rights of Aboriginal peoples, or any Canadian, are best protected where choices exist. Certain minimum standards could be created in policy, or if necessary, in law, to ensure that alternatives presented to an accused or offender are freely offered and chosen. Again a courtworkers, or legal counsel, could be one source of assuring both the system and Native people that options are clearly explained in light of legal rights.

Informal justice options under the heading of diversion are more flexible and creative, but also more vulnerable than the formally constituted Peacemakers' Courts. Under present legislation, police and prosecutors are under no obligation to allow an individual to be diverted and can proceed with charges and trial at any time regardless of the wishes of the parties involved. The required blessing by judicial authorities necessitates acceptance in style and content by non-Indian people of any community efforts in establishing Native alternatives. Some judicial personnel may perceive the end result of successful diversion programs as threatening their livelihood or jurisdictional responsibilities. Thus, diversion programs may find themselves in the unenviable position of having to be white oriented in principles and operation in efforts to obtain permission of non-Indians to exist.

Changes in philosophy, legislative directions and legal process are essential to enhance Native alternatives and Peacemakers' Courts, as well as to increase respect for the law by people of Indian descent.

The fundamental assumptions of the Canadian legal system must first be isolated, studied, clarified or altered in accordance with the modern reality of Canada: a multi-racial, multi-ethnic, multi-lingual, multi-cultural, industrialized society. Leading questions must be put to our legislators and ourselves. Do our laws in fact reflect the values and morals of most Canadians? How is the need for legislation identified, and is this process married to democratic principles in terms of the so-called "free world?" What is the main purpose of the law: to punish, to rehabilitate, to maintain the values of the community, to deter further crime, or, to protect the liberties of all members of society from undue interference by others? How can we balance the interests of the community with freedom of the individual, if at all? Does our legal system deal equally with all people coming before it? How can we best protect ourselves from discriminatory enforcement of laws, while enhancing the use of alternatives to the formal system through discretionary screening? When should legislation be considered as a remedy for an identified problem? In our times of cancerous growth in the numbers of laws, shculd ignorance of the law be no excuse for its contravention? Should there be some regional variance? Should we consider a change in the meaning of guilt such that it only connotes that a person committed the act (actus reus), excluding the requirement of illustrating the individual meant to commit the offence (mens rea)? Justice may be blind, but what does it not see?

An innovative law reform process must be created in Canada if we are to address even some of these dilemmas as a nation. Imaginative methods of consultation should be designed to in the first instance, explain the law and its principles to each sector in our society, and then, encourage informed opinion in any form, including verbal. The legislators and reformers must travel to Indian and Métis people, and begin a dialogue. Existing Law Reform bodies attached to most federal and provincial governments would be the likely bodies to shoulder such a task. However, consultation in the past has generally been restricted to persons or organizations within the justice system, as well as representatives of special interest groups. A commitment must be undertaken to adopt procedures whereby the ordinary citizen from all walks of life is consulted, and in particular those most affected by the law, notably Indian, Métis and Inuit people. Law reform must become a two-way process.

A difficulty which seriously inhibits involvement of the public in law revision is the language in which legislation is couched. The language of the law and the courtroom is filled with legal jargon, that only those with a considerable amount of training can master. If true participation by anyone outside of the legal profession is sought, then the law and its administration must be in everyday, understandable English and French.

This change in language could be resolved through complete revision of the Criminal Code of Canada, federal and provincial statues, and provincial regulations. Such revisions would also provide the opportunity to reduce the amount of legislation presently inflicted upon Canadians. The number of laws continue to explode and are becoming unbearably cumbersome. For example, Toronto alone has been adding approximately I,500 new bylaws to every year in the past decade, the total amounting to more than 30,000 bylaws.[20]

When considering the reduction in the volume of legislation, parliaments and law reform bodies might weigh the necessity for a prohibition or regulation for particular activities. For example, gambling, public intoxication, soliciting, and possession of marijuana may be morally repulsive to some individuals, but it may not be necessary to legislate these activities. Other means, particularly social and economic programs, could handle what are essentially social and economic problems.

The governmental level at which legislation is introduced is another concern worthy of study. The multi-cultural nature of Canadian society, and the needs of the urban centre as opposed to the rural settlement raise the issue of decentralization of legislative responsibilities.

Much of our recent provincial and federal legislation is the result of a crisis situation in a few communities, but laws designed to curb the difficulty are inflicted on all communities. Thus, it can be argued that in some cases, one law for everyone may be counterproductive, and instill hostility for the law rather than respect. If the unique preserve of an Indian reserve is experiencing a problem peculiar to its domain, it should be empowered to pass a band by-law rather than having to wait for the bureaucracy to act, or necessitating a law that all bands or other communities must live under. Where there exists a consensus from all regions of Canada that a particular action should be considered an offence, only then should it become a federal, or a national law.

The proposed law reform process would ultimately result in a modest amount of comprehensible legislation dealing with core values and commonly held serious offences. Provincial, municipal, and band legislation could handle their own peculiar problems through legislation and informal programs. The need for formal prohibition or regulation of activities should be justified before the heavy handed and expensive use of legal action is employed.

Traditional Indian justice could be incorporated in the rewriting of our laws. Such perspectives as requiring the community as well as the individual to repay a victim for his injury, are concepts worthy of consideration. The involvement of the victim and his family with the offender and his family is a method of fruitful negotiation lacking in our Canadian justice system. Ancient Indian justice could be expressed and encouraged through the modern concepts of fine options, community work service programs, mediation, restitution, compensation, and community sanction and supervision. We must recognize that the British tradition is not our only heritage, and in fact represents a minority of people in Canada.

The glory in such reform revolves around the notion that youthful Canada has an opportunity that few tradition-laden countries could aspire to. The original people of the territory now named Canada have a right to justice. They have a right by birth to a fair share in the determination of the tenor, philosophy, and substance in creating and enforcing the rules upon which our society will and must function. This idea or birthright is part of the substance of what is meant by the term "aboriginal rights".

Endnotes

1. N. Machiavelli, The Prince and the Discourses (New York: Random House, Inc. 1950).

2. C. Jefferson, "Peacekeeping in Native Communities" in The Offender, C.H.S. Jaywardene, ed., (Ottawa: Department of Criminology, University of Ottawa, 1976, p6.

3. J. Hogarth, Sentencing As A Human Process (Toronto: University of Toronto Press, 1971), p386.

4. Métis and Non-Status Indian Crime and Justice Commission (Serpent River Reserve, Cutler, Ontario: Woodland Studio, October, 1977), p44.

5. Federal Advisory Council on Natives and the Criminal Justice System, Peace-Makers Courts Information Package (Canadian Intergovernmental Conference Secretariat, Ottawa, Doc. No. ACN-25, February, 1976), p1.

6. ibid, p5.

7. ibid, p4.

8. Bureau of Indian Affairs, Division of Law Enforcement, Indian Law Enforcement History (Washington, D.C., February, 1975), p72.

9. Federal Advisory Council, Peace-Makers Courts, p5.

10. F. Cohen, Handbook of Federal Indian Law (Albuquerque, New Mexico: University of New Mexico, 1970), p149.

11. ibid.

12. National Conference on Native Peoples and the Criminal Justice System, Briefing Book (Ottawa: Canadian Intergovernmental Conference Secretariat, 1975), Tab 5, p 13-14.

13. Indian Rights and Treaties Research Committee, Justice System for Indian Reserves in New Brunswick (Union of New Brunswick Indians, January, 1975), p6.

14. ibid.

15. ibid, p7.

16. Indian Act, R.S., c 149, s I, 1970.

17. Law Reform Commission of Canada, Diversion (ottawa, Working Paper No. 7, January 1975), p3.

18. Nora Klap-Muts, "Diversion from the Justice System", in Crime and Delinquency Literature (March, 1974).

19. Thérèse Lajeunesse, Justice Councils: A Study (Victoria, B.C.: Department of the Attorney General, March 1976).

20. Global News, June 2, 1978, 10:15 p.m.

In Closing

Change must not only occur in the realm of the law to affect equitable treatment, or justice, for people of Indian ancestry. The social, political and economic position of Indian and Métis people within Canadian society denies any notion of equality with non-Indians. The very nature of our country's institutions and structure is at the heart of the injustice towards its Aboriginal people.

For the past 500 years Aboriginal people have gradually but clearly lost their rights to determine their own lives and destinies. Government control over Indian affairs has been so complete that decisions of even the most minor nature have been placed in the hands of non-Indian officials and politicians. Until 1960, Indians recognized as such by law were unable to vote for the government that was ruling their people. That is to say, Indian people were politically impotent throughout the era that witnessed their subjugation, and the seizure of their country. Their only political representative was, and to the main extent still is, the Minister of Indian Affairs, who was a virtual monarch in his relationship to his "charges".

The influence on the federal government that the Native organizations have gained in recent years has been to some extent undermined by the conflicting needs and positions between the various groups. These differences were created by government and have fed political inaction in Ottawa. In Canada, political influence usually grows with the size of the electorate behind a demand for changes in government law, policy or programs. If the political voice of people of Indian ancestry is to strengthen, it is likely only the government at this point who might bridge the divisions, and only with the complete participation of all Canadian people. The recognition of Aboriginal rights must be founded on a formal guarantee by the federal government that the status Indian population will not lose any legal rights, the payments now provided, or the land base that they presently enjoy, and indeed will benefit from the new rounds of negotiations. The status population must be clearly assured that the Policy Paper of 1969 which recommended abolishing special status, the Indian Act and the Indian Affairs Department, will not be implemented.

Laws should be the servants of justice, encompassing rules to not only protect society from the individual, but the individual from society. Law can be used to protect Aboriginal and treaty rights against the abuse by bureaucracy and political drifts. Special legislation concerning Indian people should not be removed, but rather, totally rewritten to guarantee special Aboriginal rights, treaty provisions, and modern land claim settlements. Perhaps it would be wise to specify the extent of Indian band jurisdiction while removing the power of the Indian Affairs Minister to veto band by-laws solely of his own accord. For a band by-law to be rescinded it would have to be shown to be unlawful under the revised Act.

"The country of Canada is a white man's country conducted according to white customs, and white laws for white purposes.

"In giving up on integration I am not giving up on the Indians but on the whites. White attitudes are the problem. Sadly enough, there is only one place where we have registered even a mild success: we have more or less integrated poverty."[1]

- Lloyd Carbaiosai

Isolation of Indian and Métis people have gone far beyond political considerations; the Aboriginal people are at the bottom of Canada's economic order. The reasons and solutions regarding the deplorable standard of living of the indigenous population require a complete analysis far beyond the purview of this book. However, we can note that the social and economic disintegration of Native communities is bound to their political and legal powerlessness, lack of an economic base, and the opposing perspectives of communal sharing and individual profit. It is also related to the fact that the employers of this country are on the whole non-Indians, and are usually loath to hire people who look like Indians.

We are all the same in that we all would like the comforts of a heated home, accessible and plentiful food, and goods that ease the strains of life. We differ in how we would obtain and distribute these resources. From the earliest times, Aboriginal people registered their dislike for the way of the immigrant white men. In early Indian societies, the existence of the group was of paramount concern. Patterns of sharing in life-sustaining resources, of food, shelter, and land, merged with rules which protected the group. The individual perished or survived along with his neighbours. The white men as a group possessed a different philosophy. The individual had the right to strive for material wealth. within certain ground rules. The condition of the group or community was quite secondary, and the profit of some was enhanced by the poverty of many. Our laws in Canada reflect these British religious, economic and social principles.

Aboriginal conflict with the law occurs when the societies of white men and Indian collide. White society has the law to protect and enhance its economic and political interests. The Indian society must succumb. The more rapid this confrontation,the more drastic the effects. The economic base of the local bands and Métis colonies collapses, and the vacuum is too often filled by destitution, welfare and migration. The traditional culture is overwhelmed, and too often results in a total breakdown of the community. The indigenous population suddenly inundated with white people and culture are in a no-man's land, or as it has been more aptly put, strangers in their own country.

The north is about to "open up", as the plains to the south did after the Second World War. If patterns remain the same, the future of the northern peoples is all too foreseeable. As Indian and Inuit traditions are destroyed, as the economic base of the communities crumbles, as the communities disintegrate, the courts and jails will change the face of the north overnight. The fate of the Aboriginal population of the north is sealed, unless a bold new endeavour is undertaken.

For Indian and Inuit peoples to become self-sufficient once again, a strong economic base should be provided through cash payments and land grants as compensation for the loss of their homeland. The present allotments of land to Inuit and Indian peoples are very inadequate for the size of population to be supported. Fulfilment, negotiation and re-negotiation of treaties and land claims could provide for enough territory that each band or settlement might become self-sufficient in the manner desired by the local people.

Only when the people of Indian and Inuit heritage and blood receive land and other forms of payment, as was promised them if they would give up their place as owners of this continent, only then will justice have been met. The 1967 Indians and the Law study stated:

> ""...the abrogation of treaties and laws by the non-Indian majority encourages the questioning, in Indian eyes, of much of the white man's law....It was the conclusion of the field workers that the question of Treaty rights pervades the field of Indian/non-Indian relationships to such an extent that resolution of these differences is a precondition to acceptance by the Indian people of most programs for their benefit and advancement."[2]

Indigenous people are not the only people who have suffered by living in Canada. To reach the Just Society that Pierre Trudeau spoke of in his first years as Prime Minister the righting of wrongs must start somewhere. The debt owed Aboriginal people in this country is its most long-standing claim to justice. The effect of settling these legitimate claims would be multiple. Protection of Aboriginal livelihood, chosen life-style and economic base, self-government and heritage would be ingrained in the new aboriginal/white relations. The formal recognition by Canadian society of the promises and rights of the original inhabitants of Canada would give birth to a promising era. The Aboriginal peoples would be partners in the future of their country.

Non-Indians must stop deciding what is best for Indians if the full injustice to Indian peoples is to be rectified. For example, authority to determine expenditure of funds, and utilization of the land and its resources must be at least shared, and even transferred completely to local Aboriginal people. As many bands and settlements are out of practice in running their own affairs, the transfer of power may take time. The notion that bands be empowered to opt for control over such areas as education whenever they feel ready is one that has merit. An initial period might be necessary to expand local Indian expertise and facilities before jurisdictional responsibilities are transferred to them.

It should be recorded that the initial cost of settling land claims and transferring authority for their daily lives back to Aboriginal people is often argued to be prohibitive by some governments and taxpayers. This should be balanced against the fact that the Department of Indian Affairs has thousands of employees, mostly non-Indian, responsible for programs and expenditures; this approach has shown itself to be ineffective and expensive. A large proportion of the budget goes towards maintenance of the system and its "clients". The human and financial costs will continue to escalate under the present course. The change to partial or full self-government by indigenous people will entail substantial reduction in Indian Affairs staff. Furthermore, if this "new deal" reaps productive results, the over-all financial burden to all Canadians in its reparation to Indian and Inuit people will likely be no more than the present strategy and perhaps less.

This proposed new relationship between Indians and non-Indians will not only benefit one side but both. The indigenous population of this territory have survived for thousands of years. In the span of a few decades, the new-comers have brought the continent to a foreboding future. We are in a desperate state in North America; our resources are plundered; our water, air and soil are being poisoned; our impersonal cities are witnessing an increasing disregard for human suffering. Canada appears to be on a slow course of suicide.

The original inhabitants of this land adopted a life-style and society that ensured the continued survival and enjoyment of the coming generations. The Aboriginal societies were founded upon the balance of people and nature, for the benefit of both.

The Aboriginal people lived by the laws of the universe; Canada is ruled by the laws of man. Adoption of Aboriginal principles then would require a distinctive shift in political, economic and social philosophies and conditions in creating a society designed not only to survive, but to ensure the peace, and good fortune of all its members. The Canadian foundation of justice must be replaced with the notions of equality and balance between the powerful and the impotent, between the state and the individual, between red and white, between nature and humanity.

Endnotes

1. K. Godderhamn, ed. I am an Indian (Toronto: J.M. Dent & Sons, 1969) p102-3.
2. Canadian Corrections Association, Indians and the Law (Ottawa: Le Droit, 1967).

BIBLIOGRAPHY

Adams, Howard, Prison of Grass, Toronto, New Press, 1975

Ahenakow, Edward, Voices of the Plains Cree
Toronto, McClelland and Stewart, 1973

anonymous, The Prehistory of the Main-Maritime Area
available through the Union of Nova Scotia Indians

Bagley, A.G., od., The Conflict of European and Eastern Algonkian Cultures, 1507-1700
Toronto, University of Toronto Press, 1969

Bancroft, Hubert H., History of British Columbia, 1792-1887
San Fransisco, The History Co., 1890

Barbeau, Marius, and Grace Melvin, The Indian Speaks
Toronto, MacMillan Co. of Canada, 1943

Bean, Wilf, Colonial Political Institutions in the Communities of the N.W.T.
Indian Brotherhood of the N.W.T., March, 1976

Biggar, H.P., trans., The Voyages of Jacques Cartier
Ottawa, F.C. Acland, Printer to the King's Most Excellent Majesty, 1924

Bowsfield, H., Louis Riel: Rebel of the Western Frontier or Victim of Politics and Prejudice?
Toronto, Copp Clark Publishing Co., 1969

Brody, Hugh, Indians on Skid Row, Ottawa, Information Canada, 1971

Brown, Lorne, and Caroline Brown, An Unauthorized History of the RCMP
Toronto, James Lewis & Samuel, 1973

Bureau of Indian Affairs, Division of Law Enforcement Services
Indian Law Enforcement History, Washington, D.C., 1975

______, Indian Reservation Criminal Justice, Task Force Analysis
Washington, D.C., 1974

______, The Combined Tribal and Bureau Law Enforcement Services Annual Report
Washington, D.C., 1974

Campbell, Maria, Halfbreed, Toronto, McClelland & Stewart, 1973

Canadian Advisory Council Newsletter, Ottawa, February, 1977

Canadian Corrections Association, Indians and the Law, Ottawa, Le Droit, 1967

Cardinal, Harold, The Unjust Society, Edmonton, Hurtig Ltd., 1969

Careless, J.S., Canada, A Story of Challenge, Toronto, MacMillan of Canada, 1963

C.A.S.N.P. Bulletin, Volume 16, No. 3
Ottawa, Canadian Association in Support of Native People, 1975

Chambliss, W.J. Crime and the Legal Process
Toronto, McGraw-Hill Book Co., 1969

Champlain, Samuel de, The Voyages and Explorations of Samuel de Champlain, 1604-1616
New York, A.S. Barnes & Co., Volume 2, 1906

Christmas, Peter, Wejkwapniaq, Nova Scotia, Micmac Association of Cultural Studies, 1977

Cohen, F. Handbook of Federal Indian Law
Albuquerque, N.M., University of New Mexico Press, 1970

Colden, C., The History of the Five Indian Nations Depending on the Province of New York in America, London, Cornell University Press, 1969 (Part I originally published in 1727 and Part II in 1747)

Copway, G. or Kan-Ge-Ga-Gah-Bowk, The Traditional History and Characteristic Sketches of the Ojibway Nation, Toronto, Coles Publishing Co., 1972 (originally published in 1850)

Curtis, Edward, The North American Indian, Volumes 7, 10, 11, and 18
New York, Johnson Reprint Corp., 1970

Daniels, C. and R. Christiansen, Many Laws
Alberta, Bulletin-Commercial Printers, 1970

Demerais, L., Action Taken by the Federal Government in Response to Proposals from 1975 Federal-Provincial Minister's Conference on Native Peoples and the Criminal Justice System, Ottawa, Ministry of the Solicitor General, June, 1977

Donkin, J.G. Trooper and Redskin in the Far North-West; Recollections of Life in the North-West Mounted Police, Canada, 1884-1888
London, Simpson, Low, Marston, Searle & Rivington, 1889

Dosman, E.J., Indians: The Urban Dilemma
Toronto, McClelland and Stewart Ltd., 1972

Douville, R. et J.D. Casonova, La Vie Quotidienne des Indians du Canada à L'époque de la Colonisation Française, Paris, Hachette, 1964

Dray, William H. Philosophy of History, Englewood Cliffs, N.J., Prentice-Hall, 1964

Drucher, Philip, Indians of the Northwest Coast
New York, McGraw-Hill Book Company, 1955

Dubienski, I. and S. Skelly, Analysis of Arrests for the Year 1969 in the City of Winnipeg with Particular Reference to Arrests of Persons of Indian Descent, Winnipeg, 1970

Duff, Wilson, The Indian History of British Columbia; Volume 1, The Impact of White Man
Victoria, Provincial Museum of Natural History and Anthropology, 1964

Dumont-Johnson, M., Apôties ou Agitateurs: La France Missionaire en Acadie
Trois-Rivières, Le Boréal Express Ltée, 1970

Emmons, G.T., The Tahtlan Indians, Anthropological Pub., Vol. IV, No. 1
Philadelphia, University Museum, 1911

Federal Advisory Council, Peacemaker's Courts Information Package
Canadian Advisory Council on Natives and Criminal Justice meeting
February, 1976, Doc. No. ACN-25

Federal-Provincial Conference on Native Peoples and the Criminal Justice System Verbatim Report, Edmonton, Canadian Intergovernmental Conference Secretariat, 1975

Finkler, H., Deviance and Social Control in Greenland
Montreal, International Centre for Comparative Criminology, 1973

Geographic Board of Canada, Handbook of Indians of Canada, Ottawa, C.H. Parmalee, 1912

Grinnell, G.B., Blackfoot Lodge Tales: The Story of a Prairie People, London, David Nutt, 1893

George, Andrew, The Carrier Indian, in the Smithers Interior News, Wed., April 6, 1977

Gerestein, B., G. Williams, and D. Thomason, Native Offender Project
Canadian Penitentiary Services, Min. of Solicitor General, Ottawa, 1973

Gooderham, K., ed., I am an Indian, Toronto, J.M. Dent & Sons, 1969

Hale, Horatio, The Iroquois Book of Rites
Toronto, Coles Publishing Co., 1972 (originally published in 1883)

Hawthorne, H.B., ed., A Survey of the Contemporary Indians of Canada, Parts I and II
Ottawa, Queen's Printer, 1967

Hearne, Samuel, A Journey from Prince of Wales's Fort in Hudson's Bay to the Northern Ocean, 1769-1772, Toronto, MacMillan Co. of Canada, 1958

Heidenreich, C., Huronia: A History and Geography of the Huron Indians, 1600-1650
Toronto, McClelland and Stewart Ltd., 1971

Henry, Alexander, and David Thompson, The Manuscript Journals of Alexander Henry and of David Thompson, 1799-1814, Volumes I and II, Minnesota, Ross & Haines, 1897

Hereditary Chief System Favored, In the Citizen, Ottawa, June, 1977

Heritage Club, Bulkley Valley Stories Collected from Old Timers Who Remember
Smithers, B.C., See-Moore Print, 1975

Hill, Charles, History of Native Brotherhoods and Sisterhoods, 1977, unpublished

Hodgetts, J.E., Pioneer Public Service, An Administrative History of the United Canadas, 1841-1867, Toronto, University of Tor. Press, 1955

Hoffman, Bernard, The Historical Ethnography of the Micmac of the Sixteenth and Seventeenth Centuries, California, University of California

Hogarth, J., Sentencing as a Human Process, Toronto, University of Tor. Press, 1971

Huculak, L. and J. Dzradyk, Sentencing Under the Liquor Control Act, Alberta, unpublished

Indian Act, R.S., C.149, s.1, Ottawa, Queen's Printer for Canada, 1970

Indian Brotherhood of N.W.T., Metis Association of N.W.T., Department of Solicitor General of Canada, Report of Study Committee Prepared by Committee, Edmonton, Canadian Intergovernmental Conference Secretariat, NCJ-39, 1975

Indian-Eskimo Association of Canada Legal Committee, Native Rights in Canada, Toronto, 1970

Indian Rights and Treaties Research Committee, Justice System for Indian Reserves in New Brunswick, Fredericton, Union of New Brunswick Indians, 1975

Indian Treaties and Surrenders from 1680 to 1902 - Canada, Volumes 1-3
Toronto, Coles Publishing Co., 1971

Jefferson, C., ed., Referral List of Recommendations from the Conference on Native Peoples and the Criminal Justice System, Ottawa, Ministry of the Solicitor General, 1975

Jenness, Diamond, "The Carrier Indians of the Buckley River: Their Social and Religious Life" In the Bureau of American Ethnology, Bulletin 133, Washington, D.C., 1943

______ The Indians of Canada, Sixth Edition, Ottawa, Information Canada, 1963

______ The Ojibway Indians of Parry Island, Their Social and Religious Life
Ottawa, Printer to the King's Most Excellent Majesty, 1935

______ The Sarcee Indians of Alberta, Department of Mines and Resources, Canada Bulletin No. 90, Anthropological Series No. 23

Jones, Peter or Kahkewaquonaby, History of the Ojibway Indians
New York, Books for Libraries Press, 1861

Kanatha; Volume 4, Number 1, Huron Village, Québec, Centre Socio-Culturel Amerindien

Kennedy, Dan or Ochankugahe, ed. J.R. Stevens, Recollections of an Assiniboine Chief
Toronto, McClelland & Stewart, 1972

Kinsey, Joseph H., Strange Empire-The Story of Louis Riel
Toronto, Swan Publishing Co., 1965

Kip, William, The Early Jesuit Missions in North America, New York, Wiley & Putnam

Kirby, W.J.C. et al, Native People in the Administration of Justice in the Provincial Courts of Alberta, Alberta Board of Review, Provincial Courts, 1978

Lafitan, Joseph, Customs of the American Indians Compared With Customs of Primitive Times
Volume 1, Toronto, Champlain Society, 1974 (originally published in 1724)

Lahontan, Louis Armand, Lahontan's Voyages
Ottawa, Graphic Publishers, 1932 (originally published in 1703)

Lajeunesse, Thérèse, Justice Councils: A Study
Victoria, British Columbia Department of the Attorney General, 1976

Laws and Regulations Established for the Colony of St. Laurent on the Saskatchewan, Dec. 10, 1873, Canadian Archives, RG18, Vol.6, File 333

Law Reform Commission of Canada, Diversion, Working Paper No. 7, Ottawa, 1975

Lescarbot, Marc, The History of New France, Volumes 1-3, translated by W.L. Grant, Toronto Champlain Society, Third Edition (originally published in 1618)

Letter from Assistant Commissioner MacLeod to Lt. Col. French, Commissioner of NWMP Canadian Archives, RG18, Volume 6

Letter from Lawrence Clarke, J.P. for NWT, to Lt. Governor of NWT, July 10, 1875 Canadian Archives, RG18, Volume 6

Letter from Morris to Minister of Justice, Ottawa, from Fort Garry, Manitoba, September 16, 1875, Canadian Archives, RG18, Volume 6

Letter to Minister of Justice from Commissioner French on Sept. 14, 1875 Canadian Archives, RG18, Volume 6, File 333

Lips, J.E., Naskapi Law (Lake St. John & Lake Mistassini Bands) American Philosophical Society, Lancaster Press, Volume 37, Part 4, 1947

Longstreth, T.M., The Silent Force: Scenes from the Life of the Mounted Police of Canada New York, The Century Co., 1927

Machiavelli, N., The Prince and the Discourses, New York, Random House Inc., 1950

Mackenzie, Alexander, Voyages from Montreal through the Continent of North America, to the Frozen and Pacific Oceans in 1789 and 1793, Volumes I & II New York, Albertana Book Co., 1922

Mails, Thomas C., Dog Soldiers, Bear Men & Buffalo Women Englewood Cliffs, N.J., Prentice-Hall, 1973

Mandlebaum, D.G., The World of the Plains Cree Saskatchewan, University of Saskatchewan Press, 1967

Matheson's Blue Book, Ottawa, Canadian Archives, RG10, Volumes 10020, 10027, 10030

McClellan, Catherine, My old People Say: An Ethnographic Survey of Southern Yukon Territory, Part 2, Ottawa, National Museums of Canada, 1975

Macleod, R.C., The NWMP and Law Enforcement, 1873-1905 Toronto, University of Toronto Press, 1976

McFeat, Tom, Indians of the North Pacific Coast, Toronto, McClelland & Stewart, 1966

McGee, H.F., The Native Peoples of Atlantic Canada, Toronto, McClelland & Stewart, 1974

McLean, J., Canadian Savage Folk: The Native Tribes of Canada
Toronto, William Briggs, 1896, reprinted by Coles Publishing Co., 1971

______ The Indians: Their Manners and Customs
Toronto, William Briggs, 1889, reprinted by Coles Publishing Co., 1970

McQuin, W., ed., Great Documents in American Indian History
New York, Praeger Publishing, 1973

Metis and Non-Status Indian Crime and Justice Commission
Serpent River Reserve, Ontario, Woodland Studio, 1977

Metis Society of Saskatchewan, Native Women of Saskatchewan, Northern Municipal Council, Position Paper, Ottawa, Canadian Intergovernmental Conference Secretariat Document No. NCJ-25, 1975

Mewett, Alan W., and Morris Maning, Criminal Law, Toronto, Butterworths, 1978

Minutes of Proceedings and Evidence of the Standing Committee on Indian and Northern Development, Issue No. 53, Ottawa, House of Commons, May 25, 1976

Montuzambert, E.L., Canada in the Seventeenth Century, Montreal, G.E. Desbarats & Co., 1883; originally by Pierre Boucher, True and Genuine Descriptions of New France,commonly called Canada, Paris, F. Lambert, 1664

Morgan, Lewis H., League of the Ho-He-No-Sau-Nee or Iroquois, Volumes I & II
New York, Burt Franklin, 1901

Morice, A.G., History of the Northern Interior of British Columbia
Third Edition, Toronto, William Briggs, 1905

_____, Notes on the Western Dénés, Transactions of the Canadian Institute, Session 1892-93

Morris, A., The Treaties of Canada with the Indians of Manitoba and the North-West Territories
Toronto, Belfords, Clarke & Co., 1880

Mulvaney, C.P., The North-West Rebellion of 1885, Toronto, A.H. Hovey & Co., 1885

National Conference on Native Peoples and the Criminal Justice System: Briefing Book
Ottawa, Canadian Intergovernmental Conference Secretariat, 1975

National Indian Brotherhood, Fact Sheet on Economic and Social Conditions for Canadian Indians, Ottawa, 1975

National Library of Canada, Indian-Inuit Authors: An Annotated Bibliography Ottawa, Information Canada, 1974

Native Brotherhood, Prince Albert Penitentiary, Brief of the Native Brotherhood of Indians and Metis to be Presented to the Kirby Board of Review, May, 1974 Ottawa, Canadian Intergovernmental Conference Secretariat, 1975

Native Clan Organization, Position Paper re the National Conference on Native Offenders Document No. NCJ-28, Ottawa, Canadian Intergovernmental Conference Secretariat, 1975

Native Courtworkers and Counselling Association of B.C., Policy Paper - The Role of the Native Courtworkers and Counselling Association of B.C., Presentation to the Legal Services Commission Hearings, Appendix "A", 1977

Newell, W.B., (Ta-lo-Wah-Ron-Ha-Gai), Crime and Justice Among the Iroquois Nations Montreal, Caughnawaga Historical Society, 1965

Niblack, A.P., The Coast Indians of Southern Alaska and Northern British Columbia New York, Johnson Reprint Corp., 1970

Oliver, E.H., The Canadian Northwest: Its Early Development and Legislative Records Volumes I & II, Ottawa, Government Printing Bureau, 1914

Opekokew, Delia, The Special Status of Indian People Within the Constitution of Canada unpublished, 1977

Parkman, F., The Conspiracy of Pontiac and the Indian War after the Conquest of Canada tenth edition, Volumes 1 & 2, Toronto, The Museum Book Co., 1886

Patterson, E.P., The Canadian Indian, A History Since 1500 Don Mills, Ont., Collier-MacMillan Canada, 1976

Perrot, N., ed. J. Tailhan, Mémoire sur les moers, coustumes et relligion des sauvages de l'Amerique septentrionale, Leipzig et Paris, 1864

Public Archives of Canada, Records Relating to Indian Affairs Information Canada, Ottawa, Part V, 1975

Quaife, Milo, ed., John Long's Voyages and Travels in the Years 1768-1788 Chicago, The Lakeside Press, 1922

Radisson, P.E., Voyages of Peter Esprit Radisson, Being An Account of his Travels and Experiences Among the North American Indians, from 1652-1684
New York, Peter Smith, 1943, originally published in 1853

Rarihokwats, How Democracy Came to St. Regis, Akwesasne Notes

Report of the Task Force on the Role of the Private Sector in Criminal Justice, Community Involvement in Criminal Justice, volume 1
Ottawa, Minister of Supply and Services of Canada, 1977

Report on the Conference on Northern Justice, Manitoba, 1973

Robinson, H.M., The Great Fur Land or Sketches of Life in the Hudson's Bay Territory
Toronto, Coles Publishing Co., originally published in 1879

Schmeiser, D.A., The Native Offender and the Law
Law Reform Commission of Canada, Ottawa, Information Canada, 1974

Schumacher, F.F., Small is Beautiful: A Study of Economics as If People Mattered
London, England, Sphere Books Ltd., 1976

Sealey, D. Bruce, and A.S. Lussier, The Metis: Canada's Forgotten People
Winnipeg, Manitoba Metis Federation Press, 1975

Siggner, A., Comparison of Canadian and Indian Populations for Deaths Due To Firearms
Ottawa, Ministry of the Solicitor General, 1976

Smith, D.G., Canadian Indians & the Law: Selected Documents, 1663-1977
Toronto, McClelland & Stewart, 1975

Speck, F.G., Beotuk and Micmac
New York, Museum of the American Indian, Heye Foundation, 1922

Stanley, G.F.G., Manitoba 1870: A metis Achievement
Winnipeg, University of Winnipeg Press, 1972

Statement of the Government of Canada on Indian Policy, Ottawa, Queen's Printer, 1969

Stewart, S., History of Indian Department
Ottawa, Canadian Archives, RG10, Vol. 3016, File 218, 410, pt.1

Symington, F., The Canadian Indian: The Illustrated History of the Great Tribes of Canada
Toronto, MacLean-Hunter, 1969

Telegraph from Col. French, NWMP, to Minister of Justice, Aug. 19, 1875
Canadian Archives, RG18, Volume 6

The Sub-committee appointed to make a comprehensive inquiry into the state of the aborigines of British North America, *Report on the Indians of Upper Canada, 1839*
Toronto, Canadiana House, 1968

Thwaites, R.G., ed., *The Jesuit Relations and Allied Documents, Travels and Explorations of the Jesuit Missionaries in New France, 1610-1791*, 73 Volumes
Cleveland, Burrows, 1896-1901

Tsiewei Attsistahonra, G., *Jules Sioui, Universal Patriot*, unpublished, 1978

Union of Nova Scotia Indians, ed., *Journal of Assembly Records*, Sydney, Nova Scotia

Union of Nova Scotia Indians, *Micmac News*, Sydney, Nova Scotia

36 Victoria (1873) ap. 35, Schedule A, *An Act Respecting the Administration of Justice, and for the Establishment of a Police Force in the N.W.T.* (assented to May 23, 1873)

Violent Deaths Committee, Kenora Social Planning Council, *They Were Young People*, 1973

Wallis and Wallis, *The Micmac Indians of Eastern Canada*
Minnesota, University of Minnesota, 1955

Warren, W., *History of the Ojibway Nation*, Minnesota, Ross & Haines, 1957

Wampum Belts, Six Nations Indian Museum, Onchiota, New York

Whiteside, D. (sin a paw), *Efforts to Develop Aboriginal Political Associations In Canada, 1850-1965*, First Draft, Aboriginal Institute of Canada, Ottawa, 1974

Yellowfly, D., *A Resolution*, Drumheller Penitentiary, Alberta, Alberta Native Brotherhood, 1975